

# SITTING AS COURT OF IMPEACHMENT

## JOURNAL OF THE SENATE

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Monday, August 5, 1957

The Senate, sitting as a court for the trial of Article of Impeachment against the Honorable George E. Holt, Circuit Judge for the Eleventh Judicial Circuit of Florida, convened at 2:00 o'clock P. M., pursuant to adjournment on Friday, August 2, 1957.

The Chief Justice presiding.

The Managers on the part of the House of Representatives. Honorable Thomas D. Beasley and Honorable Andrew J. Musselman, Jr., and their attorneys, Honorable William D. Hopkins and Honorable Paul Johnson, appeared in the seats provided for them.

The respondent, the Honorable George E. Holt, with his counsel, Honorable Richard H. Hunt, Honorable William C. Pierce and Honorable Glenn E. Summers, appeared in the seats provided for them.

By direction of the Presiding Officer, the Secretary of the Senate called the roll and the following Senators answered to their names:

Adams	Carraway	Hair	Neblett
Beall	Clarke	Hodges	Pearce
Belser	Connor	Houghton	Pope
Bishop	Davis	Johns	Rawls
Boyd	Dickinson	Johnson	Shands
Brackin	Eaton	Kelly	Stenstrom
Branch	Edwards	Kickliter	Stratton
Cabot	Gautier	Knight	
Carlton	Getzen	Morgan	

—34.

A quorum present.

CHIEF JUSTICE TERRELL: Senator Neblett, will you pray?

SENATOR NEBLETT: Heavenly Father, we have gathered together at the beginning of this week to fulfill the special earthly mission which devolves upon us as a part of our duties as Senators.

We are treading new paths and establishing precedents for the present and future judgment of men in high office.

We thank Thee, Heavenly Father, for the foundations of law and order, and for Thy commandments and precepts disclosed to us through the prophets and through our Savior, Jesus Christ and his apostles.

We pray for Thy guidance and for the inspiration of the Holy Spirit, so that Thy will may be done through these, Thy servants.

Make us aware of our responsibilities and incline our ears to listen to Thy voice.

Bless our absent brothers, and especially comfort those relatives and friends in sickness and distress. Thou art the rock of salvation and the comforter of the afflicted.

Bring us all this day into a closer and more perfect union with Thee. This we pray in the name of our Redeemer, Jesus Christ. Amen.

CHIEF JUSTICE TERRELL: The Sergeant-at-Arms will make the proclamation.

THE SERGEANT-AT-ARMS: Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Article of Impeachment exhibited by the House

of Representatives against the Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida.

By unanimous consent, the reading the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Friday, August 2, 1957, was dispensed with.

The Senate daily Journal of Friday, August 2, 1957, was corrected and as corrected was approved.

SENATOR SHANDS: Mr. Chief Justice - -

CHIEF JUSTICE TERRELL: Senator Shands.

SENATOR SHANDS: - - - I had a call this morning from Senator Barber, and enroute to Tallahassee, Mrs. Barber was taken quite ill just south of Orlando, and is now confined in the hospital at Orlando, and I also talked to Senator Barber through her doctor, and he assured me that she was not critical, but it's necessary for her to remain in the hospital several days.

So, I move that Senator Barber be excused from further participation in this impeachment trial.

SENATOR PEARCE: Second the motion.

CHIEF JUSTICE TERRELL: All in favor of the motion, let it be known by saying "aye." Contrary, the same sign.

The "ayes" have it; the motion is adopted.

MR. SUMMERS: Call Mr. Adrian McCune, please. Thereupon,

ADRIAN McCUNE,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

### DIRECT EXAMINATION

BY MR. SUMMERS:

Q Sir, will you please state your name to the Senate?

A Adrian McCune.

Q And where do you reside, please?

A Miami Beach.

Q And your occupation, sir?

A Realtor, appraiser and consultant.

Q And how long have you been an appraiser?

A I have been an appraiser in the real estate business in Miami since 1914.

Q Are you a member of any professional appraiser organizations, sir?

A Yes sir.

Q What are they?

A I am a member of the American Institute of Real Estate Appraisers; a member of the Florida Chapter of the American Institute of Real Estate Appraisers; and a Senior Member of the Society of Resident Appraisers.

Q Have you held any positions or offices in any of these appraisal organizations?

A I have.

Q Please state them to the Senate.

A I was President of the Florida Chapter of Appraisers in 1938.

Q Do you hold any position at the present time?

A No sir.

Q Have you held any office in the Miami Board of Realtors?

A Yes sir.

Q Please state when, and what?

A I was president of the Miami Board of Realtors in 1928, and I'm a member of the Board of Directors at this time.

Q In your experience as an appraiser, have you ever had an occasion to make appraisals for any official agencies of the Government?

A Locally, I make appraisals for the City of Miami; the County of Dade; the Board of Public Instruction; the village of Miami Shores; Surfside; Miami Beach; and make appraisals for the United States Army, the Navy, Coast Guard, Department of Justice and the Treasury Department.

Q Now, Mr. McCune, did you have occasion to appraise property belonging to Mr. Jewell Dowling on Lincoln Road in Miami Beach?

A Yes sir.

Q What properties did you appraise, sir?

A There were two parcels, one known as 826 through 838, and the other was the 734 through 744.

Q Who employed you, sir?

A Two of them. I was requested by Judge John Prunty, and the other one by Dan Heller.

Q Now, which one of these properties did you appraise first?

A Let's see, we appraised the one - - - 700 block.

Q Did you prepare a report?

A Yes sir.

Q Do you have that report with you, sir?

A I have my office copy.

Q What interest did Mr. Dowling have in the first property that was appraised?

A A leasehold interest.

Q Now, what was the nature of the appraisal that you made? What did you do to determine the - - - Mr. Dowling's interest in that?

A Had the property inspected to check the taxes; secured the insurance; estimated the depreciated cost of the improvement; got the information on the leases that encumbered the property; and then, from that, arrived at the value of the leasehold interest.

Q And what value did you arrive at?

A \$82,500.

Q From your examination, you determined that \$82,500 would be a reasonable value for Mr. Dowling's interest in that property?

A Fair market value of it, yes sir.

Q Now, will you very briefly describe this property for the Senate?

A It's one hundred feet on Lincoln Road; it's a corner property. It's improved with a one-story building.

Q What type building, sir?

A CBS. building, one-story commercial building.

Q How old a building was it?

A How old?

Q Yes sir.

A That building was erected, I would say, sometime around, possibly, around 1920.

It was originally the Cadillac Salon on Lincoln Road.

Q From your report can you determine who the tenants were in this particular property?

A Yes.

Q Who were they, please?

A The tenants were David Allen, on the corner, and Moseley, on the inside fifty feet.

Q Now, after you made this appraisal, did you have occasion to appraise other property belonging to Mr. Dowling on Lincoln Road?

A Yes sir.

Q Will you describe that property briefly, sir?

A That's a two-story C.B.S. commercial building, on the south side of Lincoln Road.

Q Now, what interest did Mr. Dowling have in it?

A A fee.

Q And what did you arrive at as the reasonable fair market value of that property?

A \$275,000.

Q On the property on Lincoln Road that Mr. Dowling - - - in which he owned a fee, did you work this property out on a lease basis, to determine what the income would be if it were let on a long-term lease?

A Yes sir.

Q And what did you determine that value to be?

A \$16,500 per annum, without subordination.

Q Mr. McCune, do you have knowledge of the fact that the curators for Mr. Dowling sold the first property that you have described for \$127,500?

A I learned that afterwards, yes sir.

Q What, in your opinion was that - - - what type price was that for that property?

A I would say that was a high price for that property.

Q Now, what can you tell us about the property in which he owned a fee, and in which they negotiated the 99-year lease fee?

A Well, I don't understand what you want.

Q Was the price arrived at for the lease reasonable, or what is the - - - just what is your opinion concerning the price at which it was leased?

A In my opinion, they obtained a full price.

I estimated \$16,500, and they secured a 99-year lease, \$14,000 for the first two years and \$17,000 for the balance of the time, which, in my opinion, was a good, full price for it.

MR. SUMMERS: You may inquire.

#### CROSS EXAMINATION

BY MR. MUSSELMAN:

Q Did you also, Mr. McCune, appraise the home, or one of the homes of the Dowlings?

A Yes, I did.

Q Which one did you appraise, sir?

A The one on 1120 Bay Drive.

Q Was that the one owned by Mrs. Dowling?

A I don't know; the two-story residence on Bay Drive.

Q Was it the larger of the two?

A Yes, it's the large place, yes.

Q And what was your appraisal value of that residence also?

A \$57,000.

Q And that's all the appraisal work you did in connection with this curatorship?

A Yes sir.

Q On the 99-year lease, there were several sub-leases, were there not? The property you first described - - -

A First described? There was already leases on that, yes sir.

Q And what was Mr. Dowling's net income on that property, do you know?

A I didn't estimate that, no sir.

Q Don't you normally use the net income, or the income figures, to determine the appraised value of properties, Mr. McCune?

A I used - - - just a minute - - - the rents, according to the lease, \$27,000, and estimated excess rentals from David Allen, of \$3,000, making \$30,000.

Q Is that your gross rental?

A That's gross rental.

I estimated that the net income - - - this is my estimate - - - is \$6,474.

Q Out of a gross of how much?

A Out of \$30,000.

Q Now, weren't there also some leases on the fee title? Wasn't that subject to some leases also, the other property, appraised at \$275,000?

A Yes, there were three or four leases on that.

Q Can you tell us what the net income was on that asset?

A On that, I estimated what they should receive.

The leases were rather short-term leases; they expired, some of them, beginning a few months afterwards; so, I made an estimate of what the rents should be if they were free and clear.

Q Some of these leases on the fee title were to expire; did I understand you correctly on that?

A That's right.

Q And what did you estimate the gross and net income to be from that property?

A I estimated the gross income at \$37,200; and the net annual income at \$22,409.

Q Now, are you familiar with the Court files in this cause at all, Mr. McCune?

A No sir.

(A paper instrument was handed to the witness by counsel)

Q I ask you to examine the petition, which is Entry Number 1, and I believe you are looking at it now.

Some of those properties listed there are the same, identical property which you appraised, were they not?

A One of them is, yes sir, the lease hold.

Q The leasehold; and the other is not?

A No sir.

Q Well, please check that for me, I think you'll find that it is.

A "A" is the Lot 12, Block 12 of Oceanside, Isle of Normandy.

Q I see; and that is not one of the properties?

A No, I don't believe so.

Q Well, check the one that is, sir, and tell me what price they show in the petition as the possible value of that property, the one that you are aware now as one you appraised?

A The 5 and 6 is the lease.

Q That's the lease property?

A Yes sir, which I valued at \$82,500.

Q And what did they value it for in the petition?

A \$75,000.

Q All right, sir. Now, please check the second item, and see if that isn't the fee simple title to the property on Lincoln Road?

A 5 and 6, of Block 50 is the lease; that is the lease where David Allen is.

Q Would you please get the legal descriptions of the property that you appraised?

A 5 and 6 of Block 50, Second Commercial Subdivision.

Q And what is that, what property? Is it commonly referred to as the 99-year lease?

A That is the 99-year lease, the one in which David Allen was located, David Allen and Moseley.

Q And what is the description of the property, of the fee simple title property?

A That is Lots 10 and 11, Block 49, Lincoln Sub.

MR. MUSSELMAN: No further questions.

CHIEF JUSTICE TERRELL: I have a question when you get through.

MR. SUMMERS: I have another question sir.

#### REDIRECT EXAMINATION

BY MR. SUMMERS:

Q Mr. McCune, will you explain to the Senate the condition of the second property; that is, the property in which Mr. Dowling owned the fee, insofar as the condition of the building was concerned, and the probable need for repairs to it?

A That is an old building, erected a great many years ago, and it's not been modernized.

Lincoln Road is rather competitive, and it will be necessary in the near future to modernize that building in order to maintain adequate rent.

Q Now, have you examined the lease that was executed on that property, sir?

A I went over it briefly, yes sir.

Q Who will be required to make - - - do this remodeling job?

A The lessee.

Q The lessee?

A Yes sir.

Q In other words, the income that Mr. Dowling received from that property would be net during each of those years, is that correct?

A That is correct.

Q Sir, I'll ask you one further question:

How much commission, or what fee would be charged for a lease of this kind if it had been executed by a registered broker in your area?

A That is on the one with the fee simple?

Q Yes sir.

A The commission for the sale of the 99-year lease would figure out at \$10,893.

Q What about the first property that you described? What would be the commission for the sale of the lease there?

A The sale of that lease would be \$6,375.

MR. SUMMERS: That's all.

CHIEF JUSTICE TERRELL: Mr. McCune - -

THE WITNESS: Yes sir.

MR. HUNT: Just keep your seat, sir.

CHIEF JUSTICE TERRELL: - - - just one question, please.

THE WITNESS: Sir?

CHIEF JUSTICE TERRELL: Senator Connor, one of the members of the Court, offers this question:

"If you appraise a piece of property for \$82,500, and the same property sold for \$127,500, would you call your appraisal a very good one?"

THE WITNESS: Yes sir, I would, because there was a bidding contest.

I make appraisals, and the appraisal is made on the basis of the average buyer and seller. In that instance, they got into a bidding contest, and one of the tenants, who - - - there were three tenants originally, and as I understand, Mr. Dowling gave a ten - - - gave a lease to Moseley. Then that - - - Milgrim maintained that they had a lease, and Milgrim was about to enter suit against Moseley - - -

MR. MUSSELMAN: Excuse me, please sir.

I interpose an objection to the point unless this witness testifies that he was present at the hearing in which these bids were opened, or some other firm evidence, rather than his remarks as to what he has heard.

CHIEF JUSTICE TERRELL: Testify to anything you know of your own knowledge, Mr. McCune, but not matters of hearsay.

THE WITNESS: I do not know those of my own knowledge.

MR. MUSSELMAN: These are matters that you have heard about?

THE WITNESS: Yes sir.

MR. MUSSELMAN: I interpose my objection there.

MR. SUMMERS: Mr. Chief Justice, I believe the matter is in the file that the gentleman has before him. It's before the Senate, and I think he could explain from it.

CHIEF JUSTICE TERRELL: He can certainly explain from anything that he has in his file.

MR. MUSSELMAN: He has testified that he's unfamiliar with the Court files, Your Honor.

CHIEF JUSTICE TERRELL: Do you have the matter in the files, Mr. McCune?

THE WITNESS: I haven't that.

#### FURTHER REDIRECT EXAMINATION

BY MR. SUMMERS:

Q Mr. McCune, can you further answer Senator Connor's question without stating anything that has been told to you? Can you explain it from your own knowledge?

A I can explain it in this way, that I took into considera-

tion the facts that pertained to this property, and the fact that a willing buyer should have taken into consideration, and if he was in possession of those facts and had nothing more than an interest in buying the property for his return on the money, he should not have paid except around the value that I've estimated; and that procedure is what we use every day in valuing property.

Q Do you know who purchased this lease?

A I understand that it was Moseley.

Q Do you know any reason why Mr. Moseley would have paid more than the ordinary person in the market?

A Only from what I have heard.

Q Was he in possession of the property?

A Moseley was one of the tenants.

Q He was a tenant at the time?

A Had two stores.

MR. SUMMERS: That's all.

MR. MUSSELMAN: I believe that's all, Your Honor.

(Witness excused)

MR. SUMMERS: Call Mr. Bennett, sir.

Thereupon,

S. Z. BENNETT,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

#### DIRECT EXAMINATION

BY MR. SUMMERS:

Q Sir, will you please state your name to the Senate?

A S. Z. Bennett.

Q And where do you reside?

A I reside at 977 West 48th Street, Miami Beach, Dade County, Florida.

Q And what is your occupation, sir?

A Real Estate appraiser and consultant.

Q How long have you been so engaged?

A Since 1932.

Q Now, where do you maintain your offices, sir?

A I have two offices; one in Miami, and one in Miami Beach.

Q Will you state briefly and generally to the Senate your background as an appraiser, and so forth?

A I'm a member of the American Institute of Real Estate Appraisers; a past president for two years of the South Florida Chapter of the American Institute; member of the Society of Residential Appraisers; past president of the local chapter.

I am a member of the Miami Beach Board of Realtors; past president of the Miami Beach Board of Realtors.

I represent the County of Dade; State Road Department; City of Miami Beach; City of Surfside; I've appraised for most of the attorneys in Dade County, the Treasury Department, the War Assets, Veterans Administration, and all the banks in Dade County.

Q Sir, were you employed to make an appraisal of properties belonging to Mr. Jewell Alvin Dowling?

A I appraised three pieces of property for the Dowling estate.

Q Who employed you to make these appraisals?

A I received a Court appointment from Mr. Prunty and Mr. Heller.

Q And you have made and filed a report of your appraisal?

A I have.

Q Do you have that report with you, sir?

A Yes sir.

Q Referring to your report, will you tell us which property you first appraised, and briefly describe it?

A On December 10, 1954, I completed an appraisal report as of November 8; the values were as of November 8, 1954, on two parcels of property, Lots 10 and 11, Block 49, Lincoln Subdivision, according to Plat Book 9, Page 69; and the other parcel was Lots 5 and 6, Block 50, Second Commercial Subdivision, Plat Book 6, Page 33.

Q What was Mr. Dowling's interest in that property?

A He was a lessee.

Q From your appraisal, what did you determine the value of Mr. Dowling's interest in that property to be?

A On Parcel 1, which I referred to as Lots 10 and 11, Block 49, Lincoln Subdivision, the fair market value was \$280,000, and the net rental value was \$16,800.

On Parcel 2, Lots 5 and 6, Block 50, Second Commercial Subdivision, the lessee leasehold interest was \$100,000.

Q So, on the property in which Mr. Dowling owned a leasehold interest, you estimated the value of that property to be \$100,000?

A Yes sir.

Q And if that leasehold interest was subsequently sold for \$127,500, what would be your opinion of that sales price?

A That it would be a very, very good sale for the lessee.

Q Now, in reference to the property in which Mr. Dowling owned the fee, you estimated the value of that property to be \$280,000?

A Yes sir.

Q Are you familiar with the lease that was placed on that property?

A The Harrison-Snyder lease? Is that what you're referring to?

Q Yes sir.

A Yes sir.

Q Is that a 99-year lease, sir?

A The term of the lease was ten years and two months from the date of my appraisal, from April 24, 1945 to July 31, 1955.

Q What was the return on that lease, sir?

A \$20,000 per year.

Q Sir, I want to ask you a question about the lease on the property in which Mr. Dowling owned a fee, that the curators negotiated and executed, that is, the new lease, the long-term lease.

A You're talking about Parcel 2, the one that - - - the Moseley-Milgrim?

Q Yes sir.

A Yes sir.

Q Well, what was the term of the lease that the curators executed?

A The term of the lease, the original lease was for 99 years, beginning August 1, 1929, to August 1, 2028, and - - -

Q Will you state what the net rental to Mr. Dowling from that lease was to be?

A I don't understand your question, sir.

Q What was the net, per year, that Mr. Dowling would receive under the terms of that lease?

A My statement shows an \$8,300 net before depreciation; that's my appraiser's operating statement.

Q That is your statement as to what he was receiving at the time you made the appraisal?

A Yes sir, it's my estimate of income.

Q Let's back up just a moment.

How much annual net income do you - - - would you estimate that Mr. Dowling was receiving from this property prior to the execution of the long term 99-year lease?

A The lease called for \$9,000 a year under the original lease, where the lessee was to pay the insurance and ad valorem taxes, and that was the only expense he had to incur besides maintenance.

Q How many leases were on that property, sir?

A There was an original lease with Ella Johnson and with David - - - that was the original 99-year lease, but the lessees in the property were David Allen and Moseley's of Miami Beach.

Moseley's of Miami Beach - - - there was Milgrim's and Moseley's, but at the time I made this appraisal, Moseley's and Milgrim's - - - there was a lease made that combined both stores.

Q Now, Mr. Bennett, let's get to the property in which Mr. Dowling owned the fee, and upon which the curators executed a 99-year lease.

A Yes.

Q What rental, on an annual basis, did Mr. Dowling expect to receive from that property under the terms of the lease?

A My statement, the appraiser's operating statement, showed a return of \$25,831 before depreciation.

Q Is that under the lease executed by the curators?

A No sir, that's my own operating statement.

I don't know - - - I'm not familiar with the lease executed by the curators, except I know that - - - I have read that it was \$17,500. Is that what you're referring to?

Q Yes sir.

A Yes sir, I read in the paper that it was leased for \$17,500.

Q Now, what net return had you estimated that Mr. Dowling would receive on that property?

A I estimated \$16,500 as a fair net lease value to that property.

Q Then, if the curators executed a lease where he would receive \$17,500 net per year, then that - - - in effect, he would have received an income greater than that which you estimated that he would receive?

A Yes sir, my estimate was six per cent, which is a very low capitalization rate for property.

MR. SUMMERS: You may inquire.

#### CROSS EXAMINATION

BY MR. MUSSELMAN:

Q In appraising that 99-year lease, of course, you take all of the rents and all of your expenses into consideration, don't you, Mr. Bennett?

A I use - - - to determine the market value, I would have to capitalize the rental income, yes sir.

Q Well, now, in this particular case, we have assigned or sold one 99-year lease, and we have placed a 99-year lease on another piece of property.

Is it fair to say, in line with Mr. Summers' questioning, that because the rental was increased on one piece of property that was placed under a lease, that also, the rentals that will not be forthcoming if the lease should be sold should be figured also in determining the appraised value of the property, is that correct? Now, I may not have made myself clear.

A I understand.

I don't care; my appraisal was done prior to this \$17,500 net leasehold. I appraised it as of 1954, and I estimated the fair rental value net to the lessee would be \$16,800, which is six per cent for \$280,000.

The fair market value of the property being \$280,000, a six per cent net return, to wit, \$16,800; and that's the only way you can determine the fair rental value to find out what the property is worth, and then determine what the fair return would be to the lessee, and six per cent being a very conservative figure, being \$16,800.

MR. MUSSELMAN: I understand that.

That's all.

MR. SUMMERS: No further questions.

(Witness excused)

MR. SUMMERS: Mr. Sinsley, please.

Thereupon,

MARTIN SINSLEY,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A My name is Martin Sinsley.

Q Mr. Sinsley, where do you reside?

A I live at 1123 Bay Drive, Miami Beach.

Q How long have you resided at 1123 Bay Drive?

A Since 1949.

Q What is your profession or occupation?

A I am a real estate broker.

Q How long have you been so engaged, Mr. Sinsley?

A About four years, sir.

Q And what was your business prior to that time?

A Prior to that, I had a group of children's apparel stores on Miami Beach, and prior to that, I manufactured children's wear in Miami.

Q Did you know, in his lifetime, Jewell Dowling?

A Yes sir, I did.

Q Do you, likewise, know Mrs. Dowling?

A Yes sir, I did - - - I do.

Q Do you live in the proximity of the home in which the late Mr. Dowling and Mrs. Dowling resided for a number of years?

A Yes sir, I live directly opposite the rear of their house, which is the entrance that they use.

Q Did you handle and negotiate the sale of an unoccupied guest house on behalf of the curators for the Dowling estate?

A Yes sir, at that time I was a salesman for Frank Martin, real estate broker.

Q What was the name?

A Frank Martin.

Q Is he - - -

A I was a salesman for the Frank Martin Company, real estate brokers.

Q There in Miami Beach?

A Yes sir, on 71st Street.

Q Did you undertake to negotiate a sale for that house in the year 1954?

A I didn't hear that, sir.

Q What year did you handle the sale of the house?

A I believe it was in 1953 or '54.

Q Well, did you eventually sell the guest house?

A Yes sir, I did.

Q I wish you would state to the Senate, in your own words, exactly what you did toward procuring a purchaser for that property?

A Well, there was an open listing on the house - - -

Q What do you mean by "an open listing"?

A An open listing means that any broker has the privilege of selling that house; and due to the fact that I live directly across the street from it, it was an easy matter for me to pay more attention to it than the normal broker would.

Q What was the listed price at which that property was offered for sale?

A It was offered for sale for approximately \$45,000 or \$46,000.

Q And do I understand that all brokers in Miami Beach had the listing?

A I believe so, yes sir, and in Miami, too.

Q Yes.

Now, what did you do towards selling that house?

A Well, I had an "open for inspection" sign, and managed to have either myself - - -

Q Where was that sign?

A That was directly on the corner of the property, so that traffic going down Bay Drive could see that and stop for inspection.

Q And what else did you do?

A I advertised in the Miami Daily Herald.

Q How often?

A I believe about four or five times, through the office, of course.

Q And what else did you do?

A I sat upon the house; that means that I sat there while the house was open.

We had it open for inspection seven days a week, and I sat there, interviewed people that came to inspect the house.

Q Did you have any assistance in that sitting sir?

A A few times I had a woman at the office relieve me while I went across and had my meals at home.

Q Can you state to - - - the approximate number of persons to whom you showed the house?

A Oh, I would say thirty to forty; there were an awful lot of them looked at the house.

Q Now, you eventually negotiated a sale for \$29,500, is that correct?

A That's right, sir.

Q And was that the highest and best offer produced as a result of your activities in connection with the sale of the house?

A Definitely so.

Q Do you recall what the next highest offer was?

A Well, it was around twenty, I believe, around \$20,000.

I didn't - - - I wouldn't exactly call it an offer; it was a

sort of a sum thrown at me, with a "would they accept it?" and I said it was ridiculous.

Q Now, this was before any improvements were made to the house by the curators, was it not, or were improvements made to that house?

A The house in question was the guest house. It was unoccupied. No improvements were made to that house.

Q Will you describe that house to the Senate, very briefly?

A Well, it originally had been a very well constructed house, but for some reason or other, the complete back yard had been taken away, and they had made a boat slip.

Actually, it was a very dangerous thing; it was an open boat slip, and when customers came and looked through the house, if they liked it, the minute I took them out the back door, they ran out the front of the house. They were afraid of stepping into the boat slip.

Q What condition did that boat slip produce?

A Well, it was a - - - I'd call it a catch basin for everything that floated on the bay; contained - - - well, coconut fronds, dead animals, and as a matter of fact, I believe the people in the adjoining apartment house at one time filed a complaint.

Q Well, now, did you state that there is an adjoining apartment house to that residence property?

A Oh, yes sir, yes sir. It happens to be a dead end street, and there is a - - - it's a very narrow street, I would say that within forty feet is an apartment house.

Q Now, to whom did you sell that house?

A I sold that to a couple by the name of Jack and Nellie Cooper.

I believe Mrs. Cooper is deceased now.

Q And what was the commission that was paid you or your firm for handling that sale?

A There was a five per cent commission paid.

Q Now, I'll ask you to state whether or not you often had occasion to see and talk to Mr. and Mrs. Dowling?

A Yes, I have had many occasions to talk to Mr. and Mrs. Dowling.

As a matter of fact, there were two occasions in which I - - - Mrs. Dowling came across and rang my doorbell and asked me if I would take them to dinner. Apparently, they couldn't locate their chauffeur.

Q Who was their chauffeur at that particular time?

A I don't remember, sir. I think his name - - - I'm not quite sure on that point.

Q Was it the boat captain?

A No sir, no sir, it was after the boat captain.

Q Was it the chauffeur who came down with them from Massachusetts?

A Yes sir, yes sir.

Q Would you recognize the name?

A I might, sir.

Q Was it Heilman?

A It sounds like it.

Q Would you describe him?

A I never saw the man too much. He seemed about my stature. I believe he had dark hair.

Q Well, now - - -

A A little thinner than I am.

Q Do you know whether or not he was relied on by Mr.

and Mrs. Dowling to take them out to eat, or what were their habits in that regard?

A Well, their habit, for many years, was that - - - that is, when they came down to the Beach for the season, they would leave about 4:30 for dinner.

I believe that was the only time of the day that they left the house, was for meals. I believe that was the only meal they ate.

Q At 4:30 in the afternoon?

A At 4:30, yes sir.

Q Could either one of them drive?

A No sir.

Q They relied on this chauffeur to take them to dinner?

A Yes sir.

Q Did you ever take occasion to note the absence of the car and the chauffeur from the Dowling property?

A Well, on both occasions, I inquired as to why she wanted me to drive her to the restaurant. She said, "The car is gone, and so is my chauffeur."

So, I assumed that he just wasn't there.

Q For how long would that absence continue?

A Well, it happened twice that I know of. I believe it happened other times; I believe other neighbors took them to - - -

Q To dinner?

A - - - the restaurant.

I believe so, yes sir.

Q Did Mrs. Dowling ever express herself to you about Mr. Heilman?

A Well, Mrs. Dowling was a bird-like type of a woman. There were only a few times that she expressed herself - - - she attempted to express herself when I took them to dinner.

Q Well, what happened when she'd attempt to express herself?

A Well, one particular time, I was - - -

Q Will you put that microphone up just a little bit?

A One particular - - - the first time, I - - - Mr. Dowling was a sort of a paralytic - - - in a paralytic condition; one side seemed to be paralyzed; and I held him under the arm, took him from his chair, lifted him from his chair in the living room, and walked him to my car that I had driven across the street; and she attempted to tell me something, and he said, "Keep quiet."

I didn't intend to ask any questions. I took them to the restaurant, notified the owner of the restaurant, Gus, to call me at my home, because at that time I was ready to have my dinner; as soon as they were finished, I would pick them up, which I did.

Q Would you describe the interior of the Dowling house at that time to the Senate?

A Well, I would say it was very shabby. It was - - - well, the furniture was dirty and filthy, and the general condition of the house was that there were very poor people living there, but even then, poor people would keep house clean, and that house wasn't clean.

Q You would describe the interior of the house as dirty and filthy?

A I would definitely say that it was a filthy looking house.

Q Describe the appearance of Mr. and Mrs. Dowling during that time.

A Well, Mr. Dowling, in the time that I knew him and saw him, used to wear - - - I wouldn't call them slacks

and sport jacket; they would be a jacket and a pair of pants of different suits; and when I - - - the closest - - - naturally, when I lifted him from his chair on both occasions, there was a terrible odor. The man, I don't believe, could control his body actions.

His clothes were filthy, definitely, full of odors, and - - - well, it seemed that that's the way he was since we moved there, since I knew him; and on both occasions when I took him to the car, it was an opportunity to be close to him, and I practically had to carry him to the car.

Q Would you describe Mrs. Dowling's appearance?

A Mrs. Dowling used to wear - - - I don't think I have seen her in any different clothes for many, many years.

She used to wear black dresses - - - or black dress, I should say. Whenever they arrived from Boston, and she would go outside and walk, she seemed to wear the same clothes that she had the previous year; a little sort of a straw box hat and long black dresses.

Q Did you ever see her dressed in anything else?

A Not since the past few years, sir.

Q What was her condition, with respect to cleanliness, or apparent cleanliness?

A Well, of course, I never got that close to Mrs. Dowling to notice.

I would say that she wore old clothes, but I would say they were clean; very old clothes.

Q Do you have any idea how many times that the chauffeur left them alone, and they were required to either call upon you or some other neighbor to take them out to eat?

A Well, I know in my case it was twice, but naturally, I didn't get home until 5:00 from my office. I don't know how many times neighbors - - - I believe there was another neighbor who was close to her, and I'm quite sure - - - as a matter of fact, the other neighbor had told me that she had taken her a few times.

Q Will you describe the appearance of the exterior portions of that property in which Mr. and Mrs. Dowling lived before it was improved?

A Well, we bought our house in 1948; didn't move into it until 1949.

I was always under the assumption that the house was deserted across the street.

Q That it was deserted?

A Yes sir. It was overrun with weeds; there was no grass.

As a matter of fact, cars used to U-turn in the street right on what is a beautiful lawn today.

I once went toward the rear of it; the gate was open, and I thought the house was empty, and I thought I'd look in the back; and I found the whole back was just as bad as the front. There were windows broken in the back - - - that is, the front of their house. I have reference to the back, which is on the bay.

Q The back is on the bay?

A The back is on the bay, which is actually the front of the house, had they - - - I imagine at one time it was a beautiful, sort of a parkway, an entrance.

The windows were smashed there; sort of an attempt to close them by boards.

The bulkhead - - -

Q The sea wall?

A The sea wall was at least about five or six feet higher than the ground itself, so that you would have to actually climb up to walk on the sea wall.

It was in a - - - well, the windows were dirty, and the house needed a painting; and then, it was - - - I discovered people were living in there. I was very much surprised, but it was

none of our affair. I assumed that they were eccentric people, and that's the way they wanted to live.

Q Did the yard have grass in it, or what?

A Well, the front, I would say, the set back up to the stone wall had no grass at all. In the back, there were too many bushes and wild trees; it was a general jungle affair.

Q Do you mean undergrowth?

A Undergrowth, badly.

Q Now, were you living there when Judge Prunty and Mr. Heller were appointed curators, and took over the supervision of Mr. and Mrs. Dowling?

A Yes sir.

Q Were you there when improvements were made to the home place of the Dowlings?

A Yes sir.

Q Can you state whether or not the personal appearance, as regards clothing and the personal upkeep of Mr. and Mrs. Dowling improved or otherwise?

A Well, as the house was concerned - - -

Q No, their personal appearance first?

A Personal appearance?

I met Mrs. Dowling with the caretaker in the Great Gables Restaurant, over in South Miami, or - - - I guess you'd call it Flagler Street.

Q Now, who was the caretaker?

A Mr. Bynon, Mr. Bynon and his wife.

Q Had Judge Prunty and Mr. Heller employed a couple by the name of Bynon to reside there and look out after the Dowlings?

A Yes, yes sir.

Q Now, what were you about to say that you - - -

A I was about to state that the people called me to their table. I recognized the Bynons, but I didn't recognize Mrs. Dowling; it was a complete change. She wore summer clothes, modern clothes. Either her hair had been cleaned, washed or bleached, but she looked twenty years younger, and I looked at her, and I remarked how young she looked, and she smiled and thanked me.

It was a complete metamorphosis.

Q Now, what restaurant was that you saw them in?

A In the Great Gables.

Q Now, do you know whether or not, after Mr. and Mrs. Bynon moved there, that they started preparing meals for Mr. and Mrs. Dowling?

A Oh, yes. She had - - - that was sort of a - - - they used to take her out on trips quite often. I mean rides, which is something that I had never seen before.

Well, Mrs. Dowling was, from the last time I saw her, a completely different person. I would say she looked twenty-five or thirty years younger.

Q Do you know - - - strike that.

Did you have occasion to see and talk to Mrs. Dowling as the improvements were completed, or practically completed over there?

A Yes. I talked to Mrs. Dowling a few times and bid her good morning if she was at the gate; and as a matter of fact, when I heard Mr. Dowling had passed away, I went over across the street to offer my sympathies.

She let me into the house, thanked me very much for it; and my son has been across on many occasions. He's ten years old.

As a matter of fact, last year he sold her a box of Christmas cards.



Q To Mrs. Dowling?

A Mrs. Dowling.

Q Mr. Sinsley, this man who bought the guest house, did he ever make any offer or place any value, as far as you know, on the other house?

A On the big house?

Q Before it was improved, and in the run-down condition?

A Yes sir, he - - - originally, when he bought the guest house, he asked me if he could buy the big house so that he could take down the retaining wall between the two houses.

I said, "Well, do you know the condition it's in? I don't know whether it's for sale." He said, "Yes, I've been in it"; he says, "I might go a thousand or more" - - -

MR. MUSSELMAN: Your Honor - - - excuse me - - - I hate to interpose another objection in relation to hearsay, but I believe he's talking about things that he should not talk about or testify to, since they're hearsay in nature.

CHIEF JUSTICE TERRELL: I understood him to testify with reference to what he knew about the sale price. I think he can testify to that.

BY MR. HUNT:

Q Will you state whether or not he made an offer on the property?

A Mr. Jack Cooper made an offer of \$1,000 more than he paid for the house I sold him; that would have been \$30,500.

Q Did you communicate that offer to anybody?

A No sir, I did not.

Q Had Mr. or Mrs. Dowling ever expressed any interest to you in selling that house?

A No sir.

Q You had not discussed it with them?

A No sir.

Q Do you have any opinion about what the house would have brought on the market in its run down shape which you have described?

MR. MUSSELMAN: May it please the Court, I'm going to object to that too. I think we have an appraisal on the house they're now referring to.

MR. HUNT: Well, one piece of evidence doesn't foreclose another on the point.

MR. MUSSELMAN: He's asking this gentleman to give an opinion, and I'd like to - - -

CHIEF JUSTICE TERRELL: The objection is overruled.

You may answer the question.

BY MR. HUNT:

Q Answer the question.

A Well, I have sold or handled houses on North Bay Road in the islands, that were in better condition than that one, that could have been sold for \$25,000 to \$30,000.

Q Is it your opinion that it might have brought \$30,000 on the market in its unimproved condition?

A In its what?

Q Pre-improved, before improvement, condition?

A I believe the only value it might have had was for the property itself.

Q You mean the real estate?

A Yes sir. It was too badly in need of - - - it needed a lot of money for improvements.

Q Well, what value would you have set on the property prior to improvements - - -

A Well - - -

Q - - - if it had been your property?

A Well, I would say it would be worth between - - - I would say about \$40,000 - - -

Q How much?

A - - - at maximum.

Q How much?

A A maximum of \$40,000.

Q Maximum, \$40,000?

A Yes.

At that time the lots were worth about \$12,000 to \$13,000. I believe it has about three lots there.

Q Now, after the improvements were made, will you briefly describe what the property looked like?

A Well, they made an extension to it; they completely landscaped the house. It's a beautiful looking house today.

It's pleasant to look across the street and see it. We keep our house and our lawn nice, and this is certainly an addition to the neighborhood.

There are ever so many trees, well located there - - - well, the house is beautiful.

Q Were those trees you refer to brought in under the landscaping program?

A Oh, yes sir. I believe all of them - - - all of the trees that are there now, I should say most of them must have been brought in. They could never have looked as pretty as that. They could never have trimmed them to make them look the way they are.

I know there are these short coconut trees in front of the house, which were never there before; and then, the back of the lot, bushes and trim that were never there before.

Q Hedges?

A Hedges, and so forth.

Q Do you have any opinion of the present-day market value of that property?

A I would say it would be a good buy today at about \$70,000.

Q At about \$70,000?

A Yes sir. It's a beautiful home.

Q From your observation as a neighbor, then, is it fair to say that it's your feeling that the personal appearance and the property improvements, and - - - the personal attention, rather, given to Mr. and Mrs. Dowling by Judge Prunty and Mr. Heller brought them happiness and satisfaction, compared to what they did have?

A Emphatically; no question about it.

MR. HUNT: Take the witness.

#### CROSS EXAMINATION

BY MR. MUSSELMAN:

Q I believe you testified there were three lots there?

A Yes sir. I believe it's about a hundred and fifty or a hundred and sixty feet there.

Q And the value of the lots is somewhere in the neighborhood of \$12,000 or \$13,000?

A For a fifty-foot lot.

Q So, the value of the property would be somewhere between \$36,000 - - - without the house, \$36,000 or \$39,000, is that correct?

A That's correct, sir.

Q The improvement in the house, and the landscaping, and so forth, have, of course, improved the value of the surrounding properties, has it not?

A Yes sir.

Q Has it improved the value of your property?

A I believe it has.

Q Now, the other house, we have been informed, is now for sale, or has been for sale for some time. Do you have a listing on that house?

A Which house is that?

Q The one that remains, in Mrs. Dowling's name. The one that was improved, that you did not sell?

MR. HUNT: Your Honor, I believe counsel is in error in the premise. I know of no testimony to the effect that that's for sale.

THE WITNESS: I don't know if that's for sale.

BY MR. MUSSELMAN:

Q You do not know if it's for sale?

A No sir. I certainly would like a listing on it.

Q Now, when did Mr. Heilman, the chauffeur, come down from Massachusetts?

A I don't remember exactly. I knew they had a captain at one time, that came down, that took the boats from where they usually had been docked. I believe they kept them docked over in North Miami.

Q Do you know when Mr. Heilman first started with the Dowlings?

A That was just about the same time, I believe, that I went into the real estate business. I believe that was in - - -

MR. HUNT: Mr. Sinsley, the microphone is a little too close, please. Push it away just a little bit. That's better.

A I think it must have been about '54, the early part of '54, or perhaps late '53.

Q Was it subsequent to the time that Mr. Heller and Judge Prunty were operating as the curators over Mr. Dowling?

A You mean - - - subsequently - - - will you explain to me that?

Q After?

A After they had taken over?

Q That's correct.

A I really don't know when they took over the curatorship.

Q Now, did Mr. Heller, while you were sitting on the house that you ultimately sold to Mr. Cooper, did Mr. Heller come around to see you very frequently?

A Yes. As a matter of fact, he had more sets of keys made for other brokers. There were some brokers in Miami that had requested keys for the house. He asked me if I would give them to them, and of course I lived across the street, and I said, well, that I would, which I did give out a few sets of keys.

Q Did he come around to where you were sitting on the house very frequently?

A Yes. As a matter of fact, I would say quite frequently.

Q Was he anxious to have the house sold?

A No, he merely asked me if I had gotten any offers.

Q Now, did he put up a "For Sale" sign on that house, or on the other house?

A Not that I know of.

Q Was there a "For Sale" sign put up on either one of them?

A The only "For Sale" sign that was put up - - - on the big house there was never a "For Sale" sign, not that I know of. I've never seen one.

Q Was there one on the smaller house?

A On the guest house, the only "For Sale" sign was the one that I put on.

Q Now, did Mr. - - -

A As a matter of fact, the other brokers had the advantage of my "For Sale" sign, because I had no exclusive on it.

Q Now, you testified as to the condition of the lawn. Did Mr. Heller ever, himself, water the lawn?

A Mr. Heller still waters the lawn.

Q He did, and does now?

A He still does. I noticed him over there the other day.

Q I believe you testified at one point that "That was the way they wanted to live," meaning that you assumed, when you first found out they were living in the house, that that was the way they wanted to live?

A Well, I've heard of eccentric people. People like to live one way or another. If they - - - I've always felt that if people had a lot of money, they were called eccentrics; if they didn't have a lot of money, and they lived that way, they were either called idiots or fools, or something like that.

Q But you felt - - -

A And I felt they were eccentric, because they owned that house - - - as a matter of fact, I knew of their property in Malden, Massachusetts, before - - - way before I ever met the Dowlings.

I had friends living in Malden, Massachusetts, and I've seen the Malden - - - the Dowling Building, in Malden, more than once.

I knew those were the people that owned the property across the street from us, but I never thought that they would live like that.

Q When did you first become a real estate salesman?

A I believe it was in September of 1953 that I passed my examination.

Q Have you ever done any appraisal work?

A Have I ever been - - - you mean, have I ever given any appraisals?

Q Are you a licensed appraiser?

A Me?

Q Yes sir.

A No sir. Appraisal is a matter of opinion.

Q I understand that, Mr. Sinsley. Are you a member of an association of - - -

A No sir, I wish I was.

MR. MUSSELMAN: I believe that's all.

#### REDIRECT EXAMINATION

BY MR. HUNT:

Q You have bought and sold both improved and unimproved property actively since you've been - - -

A Yes sir.

Q - - - in the business in Miami Beach?

A Yes sir, I have.

MR. HUNT: That's all.

THE WITNESS: I held a real estate license up north, too, before I came down here.

MR. HUNT: Thank you.

MR. MUSSELMAN: That's all.

(Witness excused)

MR. HUNT: Your Honor, would it be in order to suggest a short recess at this time, before we start with the next witness?

CHIEF JUSTICE TERRELL: The Court will take a ten-minute recess.

Whereupon, the Senate stood in recess from 3:25 o'clock, p.m. to 3:35 o'clock, p.m.

CHIEF JUSTICE TERRELL: Order in Court. Without objection the Chair will declare a quorum present.

MR. SUMMERS: Call Mr. Thompson, please.

Thereupon,

WILLIAM W. THOMPSON,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

#### DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A William W. Thompson.

Q What is your business or occupation, Mr. Thompson?

A Chief Civil Deputy Sheriff, Dade County, Florida, sir.

Q Were you the Chief Civil Deputy Sheriff of Dade County in early January of 1955?

A I was, sir.

Q Did you have occasion, on or about January 4, 1955, to serve one or more orders signed by Judge Holt on a man named Heilman, at the residence of Mr. and Mrs. Dowling?

A I did, sir.

Q Will you state to the Senate what you did and observed, and what transpired in that connection?

A It was in the afternoon of January 4, 1955, that Attorney Dan Heller came to my office with two papers to serve on a man named Heilman, on Bay Drive, Miami Beach.

I believe one was a Rule to Show Cause, and if I'm not mistaken, the other one was an order placing the Dowlings in protective custody; I'm not positive on the type order that it was, but that is my best knowledge of it.

I went over there, and I saw Heilman. I served him with the papers.

Q Who did you find there at the residence?

A I found Heilman and Mr. and Mrs. Dowling.

Q Go ahead.

A I found Heilman, and I served the order; advised him of the contents of it.

I also advised him that the Dowlings were under protective custody of the Court.

Would you like me to describe what I saw - - -

Q Yes.

A . . . and what happened?

Q Yes.

A When I arrived at the Dowlings' home, I found Mr. and Mrs. Dowling, both of them - - - more so, Mrs. Dowling - - - in a fearful condition. She was frightened half to death, and asked me if Heilman had to stay in the home.

Q She was frightened half to death? You mean, of Heilman?

A Of Heilman, yes sir.

Q Go ahead. What did she say?

A She asked me if it was necessary for Heilman to remain in the house. I told her that I would find out if he could leave.

I believe I then called Mr. Heller and asked him if it was all right for Heilman to leave the house. The reason I called, of course, was that he was supposed to appear in Court either the next day or the day after, on the Rule to Show Cause.

I was advised that Mr. Heilman should be - - -

MR. BEASLEY: Now, if the Court please, we object to what Mr. Heller told him. That's hearsay.

Most of his testimony has been based on hearsay, but Mr. Heller was on the witness stand. We object to it.

CHIEF JUSTICE TERRELL: Mr. Thompson, testify as to what you know yourself, not what someone else testified to you.

THE WITNESS: Yes sir.

I asked Mr. Heilman to - - - if he would leave the premises, and he said he would. He packed up his station wagon with all his possessions and left.

I found the Dowlings in a, as I said before, a state of fear, or anxiety against this Heilman. In fact, when I was in the room, the living room, Heilman came in there, and Mrs. Dowling would hide behind me - - -

BY MR. HUNT:

Q She would hide behind you when Heilman came in the room?

A Yes sir.

Q Go ahead.

A I found both Mr. and Mrs. Dowling clothed in a very dirty and unkempt condition. They were living, I would call it, in a state of squalor.

Q State what you mean by that?

A Well, the furniture was filthy, smelly; the walls were dirty, the floors were dirty. Everything in the home that I saw looked as though it hadn't been cleaned for a number of weeks.

I went in the kitchen, and I didn't find any food to amount to anything in the kitchen.

Q Did you notice anything in the dining room?

A Yes sir, I did.

Q What?

A In a corner of the dining room, the dog had done its business, it looked, about two weeks ago, or two weeks previous to that, and nothing had been cleaned up. I'm estimating the time, of course. It looked as though it had been there some time.

Q Did you state there was some type of smell or odor about the interior of the house?

A In the furniture.

Mr. Dowling was in no condition to move about by himself, and he had no control over his movements in his condition; and the furniture, as I said, smelled very horribly.

Q Was Mrs. Dowling physically able to attend to Mr. Dowling?

A I would say no sir. She didn't have the strength to help him to move around. Mr. Dowling could not walk without great assistance. He had to lean very heavily on a person who helped him to walk.

Q Was he a heavy man, Mr. Thompson?

A Yes sir, he was.

Q What would you estimate his weight?

A Just guessing, sir, I would say one hundred eighty - - - just a guess. He was a tall man.

Q Well, now, how many - - - what period of time did you spend there in the Dowling residence?

A The exact number of days, continuously, I don't recall. It was several days, possibly four or five, continuously; and when I left, Mrs. Dowling asked - - - in fact, she didn't want me to leave. She seemed fearful that Hellman would come back.

She asked me if I could come back. I told her I would be just as close as the telephone. I told her, if anything happened, to call me and I would come out, and I did check on them periodically for the next week or so.

Q Well, now, during this period in which you remained in the Dowling residence, did you or a deputy under your command have occasion to try to find Mr. Hellman to serve a further order of the Court upon him?

A Yes sir, we did, and I believe it was the next night after going there. Mr. Hellman hadn't shown up, or he hadn't called the home there, and we were fearful that he had left the State.

So, we tried to find him at the place he said he would be, and he wasn't there. We went from bar to bar, checking in that vicinity.

Q Who was with you?

A Deputy Sam Everett.

Q Sam - - - how do you spell that?

A E-v-e-r-e-t-t.

Q Do you know whether or not Mr. Heller had anything to do with trying to locate Mr. Hellman?

A Yes, Mr. Heller was out that night, attempting to find him also.

Q Were you successful in finding him?

A No sir. We located a home that he'd owned or was living at. We looked through the garage window and saw his station wagon that he had left the Dowling home in, but no one was home. We checked with the neighbors, and found out that he had not been there; so, we presumed that he had left town.

Q Did you gain any information as to what had happened to him?

A Not at that time, but I believe it was about a day later when we were informed by a phone call from - - - I believe it was Boston - - - that he had been up there, attempting to dispose -- -

MR. BEASLEY: Now, just a minute, just a minute, now. We object to that. That could only be based on hearsay, and we object to it.

CHIEF JUSTICE TERRELL: Mr. Thompson, testify to those things that came under your direct observation, but not as to what someone told you.

BY MR. HUNT:

Q Don't state what anyone told you, Mr. Thompson.

A I'm sorry.

Q Anyhow, did you later receive information about his whereabouts?

A Well, I was told that, of course.

Q Pardon?

A I say, I did receive knowledge as to where - - - his whereabouts, but I was told. I didn't know it from my own knowledge.

Q Well, he was not within your jurisdiction, is that correct?

A No sir, that I will say; he was not.

Q Now, during the time when you stayed there, I wish you would describe to the Senate what hand you took in the

daily life of Mr. and Mrs. Dowling, and what occurred between you and Mr. and Mrs. Dowling?

A When I went there, the afternoon of the 4th, and Hellman left, the Dowlings had not eaten. So, there was nothing in the kitchen, and I took the Dowlings out to eat. I took them out in their automobile. We went to a restaurant there on Normandy Island to dinner.

The next morning I took them to breakfast. In fact, every day for the next three days, I had to take them out to eat.

I had - - -

Q What car did you take them in?

A The first day I went in their Oldsmobile, but after that, I used my car.

Q Why was that?

A Well, their Oldsmobile was in sad shape, and I was afraid to drive it, sir.

Q Afraid to drive it, sir?

A Yes sir.

Q What, specifically, was wrong with it, if you know?

A I believe that it was the transmission. The best I can remember, it seemed to be falling apart.

It looked like it had been abused, both inside and out. Mainly, I would say it was the transmission, as far as I was concerned; it didn't work too well.

Q Well, anyhow, after the first trip in the Oldsmobile, you would take Mr. and Mrs. Dowling out in your own car?

A Yes sir.

Q And where would you go to eat?

A Various places. Several times there on Normandy Island; one time I took them up to the Lighthouse.

Q What was the physical appearance of Mr. and Mrs. Dowling in those days that you were there?

A The physical appearance was pretty bad. In fact, I was actually ashamed to take them into these restaurants. The first two days I was there, I entered them by myself. I had to make out as best I could; but their clothes were filthy, and it seemed to me that they had not washed or bathed properly for quite some time.

Q What did Mrs. Dowling wear?

A I don't recall the color of the dress, of course, but it was something that looked to me as if she hadn't had it off for months.

Q Well, did she wear the same dress throughout the period you were there?

A Yes sir, she did.

Q Now, then, in the course of a few days, was there a couple employed by Judge Prunty and Mr. Heller to look after the Dowlings?

A Yes sir, there was.

Q And did they come over to the home property while you were there?

A Yes, they did, and I stayed there, I think, a day or two after they got there, so that - - - to help things to go off smoothly for Mrs. Dowling. Mrs. Dowling seemed not too sure of herself with strangers, but she did get accustomed to them by the time I left.

Q Well, after you left with Mr. and Mrs. Bynon in charge, did you ever return to speak to Mr. and Mrs. Dowling?

A Yes, I did. Every so often, I would drive by and stop in and say hello to them; asked them how things were going.

Q Do you know what Mr. and Mrs. Bynon did when they came on the job, with respect to the house and the clothing of Mr. and Mrs. Dowling?

A What they did, sir?

Q Yes.

A Well, they bought them - - - went out and got them new clothes - - -

Q Both of them?

A Both of them, sir, Mr. and Mrs. Dowling; bought them new clothes, and of course, right away, they changed the condition of the house.

Q How did they change the condition of the house?

A I believe at first they had to hire some assistance, because it was a pretty big job to undertake, and I believe they did hire some maids for a day or two to help them.

Q Well, did they clean out the interior of the house?

A Oh, yes; and then, she would - - - she started cooking the meals for them, instead of them taking them out.

Q Mrs. Bynon started cooking for them?

A Yes sir.

Q Well, what happened then? Did they continue to go out?

A No, I - - - my understanding was - - - this is hearsay - - -

Q Don't state hearsay.

A To my knowledge, they never went out again, sir, to eat out.

Q After Mrs. Bynon started feeding them at home?

A That's correct, sir.

Q Now, during your later visits there, did you establish, to your own satisfaction, whether they seemed to be in good hands and in happy - - - happier circumstances?

A They seemed to be two different people, sir.

Q I'll ask you to state what Mr. Dowling ever said to you with respect to the automobile situation, if anything?

A Mr. Dowling, on several occasions, remarked about that Oldsmobile, and he did state that he would like a Cadillac.

In fact, Mr. Dowling, when he wanted anything, or was opinionated in any way, he was very much so. He would let you know very strongly what he wanted, and when he said he wanted a Cadillac, he said he wanted a Cadillac.

Q Said he wanted a Cadillac?

A Yes sir.

Q What was Mrs. Dowling's attitude, generally, in Mr. Dowling's presence?

A She seemed to have a constant fear of Mr. Dowling.

In fact, on one occasion - - - I believe it was the second night I was there - - - she beckoned to me to come with her. Mr. Dowling was sitting in the living room; and we went to the bedroom, and she pointed to a knife, and she said, "Take it, take it," and then she pointed back toward Mr. Dowling, who was downstairs, and she seemed to be frightened of that knife.

So, I took the knife and put it underneath the seat of my car.

Q What kind of knife was it?

A It was a hunting knife, sir, in a sheath. It looked to be fairly new, and it was very sharp.

Q Well, what was the attitude of Mr. and Mrs. Dowling when you announced that your time was up, and you had to leave?

A Mrs. Dowling showed some anxiety; Mr. Dowling did not. Mrs. Dowling showed quite a bit of anxiety about my

leaving, but I reassured her that the couple who were there would take care of her, and that if she needed me, she could call me on the phone.

Q And how many times would you estimate after that, Mr. Thompson, you informally dropped in on Mr. and Mrs. Dowling to check up on their welfare?

A I don't know, sir. It would be strictly an estimate, but I would say eight to ten times, at least.

Q While you were there, did you become - - - have occasion to become familiar with the outside appearance of that property, including the yard and the wall and the exterior portions of the house?

A Yes sir, I did.

Q Will you state to the Senate, in your own words, just what the house and the property, over-all, looked like?

A The house itself on the outside was very drab; looked as though it had needed a paint job for quite some time.

The yard, I, frankly, didn't notice any grass on it; looked like mostly weeds, but why I remember the backyard so well is, I kept a fishing pole in the back of my car - - -

Q Will you speak out just a little bit?

A I kept a fishing pole in the back of my car, and the Dowlings were right on the water; they had a sea wall in their back yard, right on the waterway, and I used to go out there and do a little fishing while Mr. Dowling sat on the back porch. He used to get a big kick out of watching me catch fish. They were very small fish, but he did seem to enjoy it, but the reason I noticed the yard, every time I would walk from the sea wall to the house, why, I got quite a few stickers or sandspurs on my pants; there was nothing but weeds, and they were fairly high.

As I recall the sea wall, I believe, sir, that it was broken down, or at least at one spot the sea wall seemed to have crumbled.

Q Do you recall whether or not the bayward side of the lot had sunk in, so to speak?

A Yes sir, right by the sea wall, in one location.

Q Pardon?

A By the sea wall, sir, at least one spot was - - - had fallen down or sunken in.

Q Mr. Thompson, did you have any occasion to visit the Dowlings after the property was fixed up and - - -

A Yes sir.

Q - - - improved?

A Yes sir, I did.

Q Tell the Senate what you found, with respect to Mr. and Mrs. Dowling?

A As far as the house was concerned, both inside and out, it looked like an entirely different house.

It was beautifully furnished the second time, or after it was redone. The outside was painted; the yard was completely sodded. It looked as though the sprinkler system - - - they had a sprinkler system there, I think - - - I'm not positive on that. On the inside of the house, I believe all the walls had been repainted, new draperies on the windows, and new furniture throughout.

It was a completely different house.

Q What was Mrs. Dowling's attitude, with respect to the new surroundings?

A She appeared very proud and pleased with the condition. In fact, when she was showing me through the house, she seemed to be beaming all over.

Q Were Mr. and Mrs. Bynon still there at that time?

A Yes sir.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. MUSSELMAN:

Q Did you receive any compensation in addition to your regular compensation as a Deputy Sheriff?

A Yes sir, I did.

Q How much did you receive, Mr. Thompson?

A I based it, sir, on a dollar and a half an hour.

Q And that was in addition to your normal compensation, or was that in lieu of it?

A Pardon?

Q Was that in addition to your normal compensation as a Deputy Sheriff, or in lieu of it?

A That was in addition, because most of it was done on my own time, sir.

MR. HUNT: We couldn't hear that last answer.

THE WITNESS: I said that it was in addition, sir, because most of it - - - all or most of it was done on my own time, week ends and evenings.

BY MR. MUSSELMAN:

Q How long, in total number of days, were you with the Dowlings?

A I believe, sir, that it was the 4th through the 11th, inclusive. I believe that's correct, to the best of my knowledge.

Q Of January - - -

A Yes sir.

Q - - - 1955?

A Yes sir.

Q That's a week, is that correct?

A Yes.

Q Well, what was the total compensation you received?

A It was in excess of \$200; the exact figure, I don't know. It was about two - - - \$260, or right in that vicinity.

Q In the neighborhood of \$260?

A Yes.

Q And what were the limits of authority? What was the grant of authority the Court had given to you? What were your duties?

A Merely, as I saw it, sir, to protect, look out for the welfare of the Dowlings.

They were in no way restricted as to what they could do or where they could go, except through the physical handicap of Mr. Dowling, who could go nowhere without assistance.

Q Did you have to go with them wherever they went?

A I don't believe that I really had to, sir, but there was no one else to take them.

Q You were not instructed to go with them wherever they went - - -

A No sir.

Q - - - is that correct?

Were there any relatives that ever came to see the Dowlings, or any that you knew of, that they might have told you about?

A No sir, not to my knowledge, no relatives.

There was one woman who came down, but I don't believe she was a relative.

Q Was that Mrs. Bickford?

A That's right, sir.

MR. MUSSELMAN: I believe that's all. I don't have any further questions.

MR. HUNT: That's all. Thank you, Mr. Thompson.

CHIEF JUSTICE TERRELL: Mr. Thompson, Senator Connor, of the Court, sends up this question - - - just keep your seat:

"Were the Dowlings in Court custody at the time you spent a few days in the Dowling home?"

THE WITNESS: Were they in the Court's custody? Is that the question, sir?

CHIEF JUSTICE TERRELL: Yes, "Were the Dowlings in the custody of the Court at the time you spent a few days in the Dowling home?"

THE WITNESS: To my knowledge, sir, as I understand it, they were under protective custody at that time, yes sir.

CHIEF JUSTICE TERRELL: The second question:

"Whose employ were you in when you were at the Dowling home?"

THE WITNESS: Still in the employ of the Sheriff's office, sir.

CHIEF JUSTICE TERRELL: Senator Davis, of the Court, sends up this question:

"At the time that you were in the Dowling home, what appeared to be Mrs. Dowling's mental condition?"

THE WITNESS: As to that, sir, it's hard to explain exactly her mental condition. She was certainly a nervous, frightened person, and during the first - - - at least the first two days, she didn't appear to be able to carry on a very normal conversation. When she was talking to me, she would be looking all around, as if somebody were listening.

I would say, sir, that definitely, she was not a completely normal person.

CHIEF JUSTICE TERRELL: That's all.

MR. HUNT: No further questions.

Can the witness be excused, Your Honor?

MR. MUSSELMAN: Yes. Thank you.

MR. HUNT: Thank you, Mr. Thompson.

CHIEF JUSTICE TERRELL: Come down, Mr. Thompson. (Witness excused)

MR. SUMMERS: Call Mr. Klein, please. Thereupon,

NATHANIEL J. KLEIN,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. SUMMERS:

Q Sir, will you please state your name to the Senate?

A Nathaniel J. Klein.

Q Where do you reside, sir?

A Miami Beach, Florida.

Q What is your occupation?

A A lawyer.

Q How long have you been engaged in the practice of law?

A Twenty-nine years.

Q And how long in Dade County?

A Since 1942.

Q Are you practicing with a firm now, sir?

A I am.

Q What is the name of the firm?

A Klein, Warren & Kline.

Q Were you engaged in the practice of law in Dade County in all of 1954?

A I was.

Q What positions have you held, if any, with the Florida Bar?

A With the - - - I didn't quite hear you.

Q What positions, if any, have you held with the Florida Bar?

A I was a member of the Board of Bar Examiners for three years, up until approximately two years ago.

Q Any other positions in the Dade County Bar Association?

A None.

Q Sir, you are familiar with the case of the curatorship of Jewell Alvin Dowling?

A To a certain extent, yes sir.

Q Would you just state, briefly, to the Senate to what extent?

A Well, I represented Jewell Alvin Dowling at the commencement of the proceedings, and then, later, I filed his will for probate.

Q How long had you represented Mr. Dowling?

A I represented - - - well, the first time I actually represented him was when he came in with the bill of complaint, seeking to have him declared incompetent, but I had known him for several years. I had been in a deal on the Lincoln Road property, where I represented the lessee on his property, and I had met him.

Q Now, when did he come in to see you with this bill of complaint?

A It was two or three days after the bill was filed, and two or three days before the hearing on the - - - the temporary hearing.

Q Whose complaint was it that he brought you?

A It was a complaint by his wife to have him declared incompetent.

Q To have Mr. Dowling declared incompetent?

A Jewell A. Dowling, yes sir.

Q And you represented him in that proceeding?

A He asked me to represent him.

Q Now, what did you do toward representing him?

A We filed an answer and a cross bill after we felt that she was quite old, senile, and apparently, incompetent; and we appeared at the various hearings here and in Boston.

Q And in your - - - you filed a cross complaint?

A We filed a cross complaint, seeking to have her declared incompetent.

Q Now, in that proceeding, were medical examiners appointed to examine both parties?

A Yes, I believe so, by the Court.

Q They were appointed by Judge Holt?

A That's correct.

Q Did you attend the hearing on the petition of Mrs. Dowling?

A I attended, I believe, two hearings; the first one, and

the adjourned hearing, a couple of days later; and I believe I was in Court in June when the curators - - - when the hearing came up on final, but I'm not sure whether I was there when the curators were appointed.

Q Now, will you state briefly to the Senate just what transpired at these first two hearings that you attended?

A Well, at the first two hearings, there was testimony by a Grace Donlin, his secretary in Boston, and I believe Dr. Anderson and a Dr. Kells, and - - - to the effect that he was unable to carry on his business affairs.

I cross examined quite vigorously, and in my opinion, I disproved a lot of the medical testimony, but it was obvious, at a second hearing, to me that Mr. Dowling could not carry on his affairs physically, and by stipulation between William Lane, Mrs. Dowling's attorney, and myself, we consented to a temporary receiver to take charge of his affairs because of his physical infirmity.

Q Then, the appointment of the receiver was on stipulation of counsel for both sides?

A I; was, because it took him fifteen minutes to sign his name; he was partially paralyzed.

Q And at the time you were representing Mr. Dowling, you were convinced in your own mind that he could not properly handle his own business?

A Physically.

Q Yes.

A But the more I talked to him, the more I was convinced that he was mentally competent. He was sharp as a tack.

Q Now, Mr. Klein, upon - - - what was your reason, or what was the basis for your conclusion that Mrs. Dowling was also incompetent?

A Well, the - - - Mr. Dowling didn't get along with the temporary receiver. He liked me somewhat, and I was obliged to visit him at his home almost nightly, or late in the afternoon, for a period of weeks, figuratively, to hold his hand.

Of course, his wife lived in the house, and they were both present, and I would have to sit there under trying circumstances; the house itself was not appetizing, and he would figuratively cry on my shoulders; and in discussions there, and observations of her, actually, it became my firm conviction, the more I spoke to him, that he knew what he was doing, but that she was senile already, and a very weak sister, and I think had been weak all her life.

Q Now, you have said the house was not - - - I believe, to use your expression, "very appetizing."

What did you mean by that?

A Well, it had been quite a pretentious mansion when it was built, but the furniture was old, run down, and Mr. Dowling had had several strokes, and he sat in the one chair in this large living room. The chair was stained badly. The whole atmosphere of the room smelled of urine. He had no control over his bladder; and he had a male nurse all the time; and I couldn't wait to get out of there, especially in the hot days of June, but I had to sit there; he wouldn't let go of me.

Q Now, how often did you go to see Mr. Dowling?

A I would say between the end of March and the beginning of June, I probably - - - there was a time there where I was out of town - - - I averaged three days a week.

Q What year was that, sir?

A 1954.

Q About how often would you go, now, to see him? How often did you go by his home to talk to Mr. Dowling?

A About three times a week, average. There were some weeks I went every day, and there were some weeks where I was out of town, or I missed most of the week.

Q Who was taking care of Mr. Dowling during that time?

A Well, at the beginning, there was a Captain Cooper, who was captain of his boat, and his chauffeur. Then we tried a number of people, but there was a run of several of them that were there for a few days. He was a little bit cantankerous, and if he didn't like them, he let them know, and if they couldn't take it, they wouldn't stay.

Then, the last one was a man named Heilman, and then I was out of the picture.

Q Now, why did you go back to visit with him so often during these three months?

A He'd call up. He would have his man call me up; tell me I - - - he wanted to see me, and if I didn't get around, I would say I would get there on my way home - - - it wasn't on my way home, it was far out of the way - - - and if I didn't get there at 5:00 or 5:30, quarter to six, he would have his man call me at home at night and bawl me out, why I missed him.

Q In other words, he was the type of client that demanded much attention?

A And I was the type of lawyer that had a soft shoulder, I think.

I could have just been the lawyer, instead of his guardian.

Q Now, you were representing Mr. Dowling at the time that the curators were appointed for him?

A I was.

Q And you were aware of the fact that co-curators were appointed?

A I was.

Q Did you at that time raise any objection to the appointment of two curators, rather than one?

A No. I stipulated that he needed somebody.

As a matter of fact, at that time, a proposal had been made shortly before to Bill Lane that he and I be named - - - I didn't make the proposal - - - voluntary co-trustees to handle his affairs while the suit was pending, and he refused, and the co-trustees were appointed, and as far as I was concerned, I thought, if the Court wanted to appoint co-trustees, I had no say in the matter.

Q I'll ask you this question: In your experience as a lawyer, from your experience as a lawyer, do you interpret the statute of this State, authorizing the Circuit Judge to appoint a curator for an incompetent, do you construe that to be a word of limitation?

A I never gave it any thought.

To me, a curator, and a receiver, a trustee are more or less in the same class, and I do know - - - I don't - - - I can't say I ever knew of any co-curators, but I knew of a lot of situations of co-trustees, co-receivers, and the like, but I never gave any thought as to whether, in a curatorship, there was a distinction or a limitation.

Q But you raised no objection to the appointment of the two?

A No, I did not.

Q Now, Mr. Klein, what would you say the duties of the curators were in this particular curatorship, insofar as they relate to Mr. Dowling? Would their duties be peculiar in any way, considering his condition?

A Well, you must understand that I faded out of the picture, so to speak, from about June, 1954, until I presented the will for probate, in May or June, 1955; and I don't know what happened, but if they had the same problem I had in the short time - - - I was only his attorney; they had to wet nurse him.

I mean, that would be my - - -

Q They had to be a wet nurse?

A Sort of a wet nurse, they had to be, because he was cantankerous. When he demanded, you had to be there.

Q He was a very demanding client?

A He was. He was a grumpy, crotchety old man by then, and had always had a lot of money and big business.

His wife complained to me that he was domineering. I imagine he was.

Q And he also had some rather complicated business transactions, business dealings?

A Well, he had a lot of property in both Massachusetts and in Miami, Miami Beach.

Q Now, you have mentioned a will a few moments ago, which you filed for probate.

Will you state to the Senate, briefly, the circumstance under which you drew that will, and - - -

A Yes. When he came in to me, on or about - - - I think it was March 22, 1954, even though he handed me the bill of complaint which had been served upon him, he - - - his objections were mainly toward his life-long friend, a banker named Gilman, in Malden, Massachusetts, who, he said, instigated the suit; and he brought with him several copies of wills that, as I recall it, were made and executed in the late 40's, perhaps, a year or two apart. There might have been three wills.

And in all of them, and particularly the last one, which he said was a copy of his last will, Gilman was a co-executor and co-trustee named therein; and the thing uppermost in his mind was that he wanted to know how fast he could get Gilman off his will.

Well, I could have drawn a codicil, but the will was comparatively short. The other wills had left his wife a life estate, and residuary estates to various charities, outside of a few bequests to relatives of his.

He wanted to change the charitable end of it, and he left it all to the Salvation Army, but he didn't disturb the provision leaving his wife a life estate.

When he got to the executors and trustees, I had a little difficulty with him. He wanted to name me, and I anticipated - - - this was a suit to declare him mentally incompetent - - - that if I had inserted my name as an executor and trustee, there might be a question of motive, and I told him I didn't feel that I would be the proper person.

He wanted to name one of my associates, partners, and I said no, for the same reason.

Then he suggested one of the few friends he had, a client of mine, who was the lessee in the House & Garden Furniture, on the Lincoln Road property, and I begged off on that for the same reason; and finally, I suggested that he might select two, a banker and a business man, and after searching his mind quite a bit, he selected Edward Mercer, then President of the Mercantile National Bank, and Moseley, who was one of his tenants on Lincoln Road; and I prepared all the notes on the will.

I believe, after he left, I dictated the will, but it was executed several days later, about the time of the hearing, one of the two hearings.

Q Mr. Klein, what was the reason that Mr. Dowling wanted to get this gentleman up in Massachusetts off his will?

A Well, he told me the story which, to a certain extent, I verified later.

Mr. Dowling owned a large office building in Malden, Massachusetts, which had quite a group of store properties on the ground floor, the largest of which was occupied by the Jordan Marsh Department Store chain; and he told me that he had been talked into leasing the property to Jordan Marsh for fifty years, and as I recall it, the net rental to him ran about \$11,000 a year, where, up to the time of the fifty-year leasing, his gross rental return from all the offices and stores, was in the eighties, \$80,000 and something a year, and net, ran \$35,000, at least; and that he had begun to question Gilman the summer before about the advice he had given him and his interest in seeing that he leased it to Jordan Marsh, and as the old man put it to me, he said, "I guess he's afraid that I won't die soon enough so he can cover up on it as an executor, and he started this suit," because Gilman was appointed conservator, temporary conservator in Massachusetts, but



hadn't filed his bond, and when our temporary receiver went up there, and the Court was apprized of the situation, they substituted the Florida temporary receiver as temporary conservator for Gilman in Massachusetts.

Q And who was the temporary Florida receiver?

A That was Perlmutter.

Q Did Mr. Dowling express any opinion as to whether this banker had played any role in having instituted this proceeding?

A Oh, he knew that, because he knew that - - he had been down to see him, and he knew that he had sent this doctor from Massachusetts down to examine him preliminary to the filing, and he knew that he was influencing this Grace Donlin, who had been his secretary for years.

I mean, he - - I didn't dream that up; he gave me that information.

Q Now, Mr. Klein, from your experience as an attorney, during the time that you were in this proceeding, from sometime in March until the curators were appointed, in June, in your opinion, was this proceeding before Judge Holt regular in every manner, every respect?

A I've looked at the record, and I know what went into the record, and as far as I know, it's no different than any other curatorship proceeding or receivership proceeding.

My opinion, to this day, is that Dowling needed help. The only difference of opinion was that I felt that he was mentally competent, and only physically incompetent, and I was justified in that.

MR. SUMMERS: You may inquire.

#### CROSS EXAMINATION

BY MR. MUSSELMAN:

Q Mr. Klein, as a matter of fact, your opinion expressed on that has been substantiated by the Probate Court; isn't that correct?

A Not strictly. I think the Circuit Court acceded to our stipulation, and I believe - - I haven't looked at the record in several years, I believe that the curators were appointed on the basis of the stipulation of physical infirmity, and - -

Q Excuse me, sir, I don't believe you understood my question.

What I stated was, that your opinion of Mr. Dowling's mental competency was sustained by the findings of the Probate Court, in admitting the will to probate; isn't that correct?

A Overwhelmingly, yes. In fact, if you read the testimony, it was way one sided in favor of his competency.

Q Now, you have stated, I believe, that you had some discussion with him at the time he was executing his will, about the executors?

A Yes.

Q Did he know Mr. Mercer?

A He didn't know Mr. Mercer, but I named five or six bankers, and I named three or four business men, and the only two he knew, and knew fairly well, were Mr. Sokol, of House & Garden Furniture, his tenant on one Lincoln Road building, and Mr. Moseley, his tenant in the other one, one of his tenants; and when I disqualified Sokol by suggestion, he named Moseley, and I named four or five bankers, and he said he thought he had met Edward Mercer, and he said, "He's good enough for me," and I let it go at that.

Q Now, you stated that he had the mental agility, or capacity to understand what Mr. Gilman had done in Massachusetts, relative to the lease with Jordan Marsh, is that correct?

A He did at that time. Whether he had the mental capacity or agility, or a suspicion, at the time Gilman talked him into the lease, I don't know.

Q I see. But at the time he executed his will, he did know what Gilman had done to him?

A Oh, definitely. I think, more important in his mind than the incompetency proceeding was to get Gilman off his will. He couldn't do it fast enough.

Q Well, you mentioned Grace Donlin, his secretary, and the fact that Mr. Gilman was influencing her. What did he do to influence her? In what manner did he influence her?

A In the way she was - - she testified - - I think she signed an affidavit; she was then working - - she was on the payroll of Jordan Marsh then, and the only thing I thought showed a little cleverness, in being able to understand that she had turned from a very loyal employee of his to working against him.

Q He comprehended that?

A He did, he did.

Q Do you know, from your representation of Mr. Dowling, what his annual net income, or annual income, was?

A No, I would be guessing now. I did know generally, but the accountant would know.

I didn't go into that too much. I know it was quite high before he leased the building.

Q All right, sir. Will you please tell us what you did after Mr. Dowling came to you in the first instance, to represent him in the incompetency hearing, what steps did you take from that point?

A Well, the first thing, I tried to protect him against an eventuality where he would be left totally dependent.

He told me he had about \$10,000 in an account in a North Shore Bank, and I advised him to take it out.

The banker called me to check, and he said that, "I don't doubt that he knows what he's doing, but I am just questioning his drawing such a large amount out."

I took the \$500 retainer and gave him a receipt for \$9,500, which is in the Court record, that I was holding for him. Perhaps I should have taken more, but I leaned over backward because of the nature of the proceedings, and I subsequently turned the \$9,500 over to the temporary receiver.

I got facts, names of witnesses who could be used in combating the incompetency proceedings.

I obtained all the information necessary on his will, and in the next couple of days, I prepared the answer, cross bill, and I dictated the will.

Q I see, sir; and you represented him, also, at the hearings, is that correct?

A I did, along with Lehrman, and there might have been another member of my firm present.

Q How many hearings did you represent him at?

A I appeared on three. The first two were at the beginning, a day or two apart; and then, one in June, when the curators were appointed.

In between, I appeared at a lengthy deposition hearing in Boston, and then, I was up there on another matter - - no, I didn't appear in the Court there; Lehrman did.

Q You did not appear in Court in Boston?

A No, but my office did. That would be about five hearings.

Q All right, sir; and you stated that you had a \$500 retainer out of the \$10,000?

A Yes.

Q Did you keep that retainer as part of the \$8,000 that you received?

A That was a retainer, which was not returned. It was - - part of it was used in miscellaneous expenditures, and so forth.

The \$9,500 was turned over intact to the temporary receiver.

Q Now, you were awarded a fee of \$8,000 - - -

A \$8,000.

Q - - - on October 1 - - - or October 21, 1954?

A That's correct.

Q Did the \$500 constitute part of the \$8,000, or - - -

A No, the total was \$8,500.

Q Now, as I understand correctly, as soon as the curators were appointed, then you faded from the scene - - -

A That is correct.

Q - - - and you have recently come back in on the basis of presenting the will to probate?

A That's right, about a year later, approximately.

Q Isn't it also true that you have - - - or your firm has filed in the Probate Court a claim against the estate, or - - - no, a claim against Mrs. Dowling for the amount of the money spent on the house, or refurbishing the house?

A Yes, we did.

Q Now, what is the status of the probate matter at this time?

A An appeal was taken, and the matter has not been called. We've been waiting for a definite time for the appeal.

I understand - - - I don't know first hand - - - from my associate counsel, Marion Sibley, that the matter is to be called up shortly, in the fall, before Judge Wiseheart.

Q And where did the appeal fall, under the blind filing system, when it was first appealed? Are you familiar with those circumstances?

A No, I didn't know until I was told. It was all hearsay. I was called before the Grand Jury, and they told me where it fell. I didn't know.

Q Mr. Klein, how long have you practiced law in Florida?

A In Florida, since February, 1942.

Q Prior to that time?

A New Jersey, since 1928.

Q I believe you testified that in your opinion, from looking over the file, that everything appeared to be regular and normal in the curatorship - - - under normal curatorship, is that correct?

A As far as the pleadings and records, and as far as what I could see.

During this time that I was in it, we battled all the way. The year I was out of it, I don't recall having anything except one call from Mr. Dowling from Boston, shortly after I was out of it, but I'd been out of town, and when I got back, there were two or three messages that were four or five days old.

I tried to call back, call Mr. Dowling back in Boston, and the operator said the call was cancelled, but I hadn't seen him from June, 1954, to this day.

Of course, he died in the interim.

Q Is it normal to have, or have you heard of any other instance where a curator or curators were appointed for a husband and the wife?

A I don't, frankly; I never heard of any.

Q Do you, in your experience, or could you have, in your experience as an attorney, have anticipated a conflict of interests between the two positions?

A I could, except that, knowing these circumstances, and the way those two people lived, they were not separated; they lived in the same house, and she took care of his wants, even though she was battling him in Court, technically, I don't think she comprehended what she was doing in Court, but knowing the circumstances, and the fact that they needed

somebody to take a personal interest, I would say that although normally, there would be conflict of interests, in that two curators, or separate curators should be appointed; I would say the best thing in this case was to have a common denominator between the two, because, after all, the purpose was to take care of their wants and preserve their assets.

Q Well, wasn't there a question that arose at some place in the proceeding, as to the title to some stocks, bonds, or other negotiable instruments?

A Yes. Perlmutter, when he went up to Massachusetts, checked the files and records of Dowling in his office, and in the files were stocks and bonds, some of which were assigned to Mrs. Dowling, and others were endorsed in blank, some by her and some by Mr. Dowling; and perhaps, in his zeal, he usurped somebody's authority, but he took all of them, brought them back to preserve them, because he didn't know what to expect. He didn't know whether Gilman had access to it, or anybody else.

Later, there was a controversy over it, and all the different interests were afraid that somebody else was going to have the advantage, and as far as we were concerned, we put it right in the Court's lap, and said it would be up to the Court to determine before we turned it loose, or asked the receiver to turn it loose.

Ultimately, I believe it got back to the proper parties, who controlled Mrs. Dowlings' estate.

Q Couldn't there have been some litigation to determine the title to that property?

A I wasn't in it then. That was all disposed of between the time the curators were appointed and the will was offered for probate.

I only know about it by hearsay, and perhaps, in looking over the file at one time.

Q Now, when the property belonging to Mrs. Dowling was refurbished with money belonging to Mr. Dowling, which claim you filed - - -

A Yes.

Q - - - wasn't there a conflict of interests as to that problem, and didn't the Court so rule?

A Well, we maintained that.

We - - - the first thing we discovered, when we got into the probate of the will, was that where Mrs. Dowling owned the house, the curators had no funds of Mrs. Dowling's; they provided the funds from Mr. Dowling's estate, but their reason was that the property was rehabilitated, refurbished for the mutual benefit of both, who were still living together as husband and wife, and that, of necessity, they had to get the money from somewhere.

Going one step further, I think - - - I don't recall who mentioned it to me, but he said, "As long as Mrs. Dowling is going to inherit Mr. Dowling's money, you might as well use it while he's alive and she's alive."

So, that was the reason, but legally and technically, I still maintained that the money should not have been spent.

Q Now, as a matter of fact, Mr. Klein, the will divested her of anything but a life interest, didn't it?

A A life interest, that's correct.

Q Now, what were the provisions of the will to which you testified, the prior will, regarding the life interest?

A The prior will left a life interest to her - - - I had a little difficulty with him.

He was a little angry with her, and thought he would change it, and I suggested, very politely - - - I didn't want to influence him, but I suggested that he was a little angry then, and that in his better judgment, he wouldn't change it, and without too much difficulty, he agreed to go along with the same provision he had in his other wills, a life estate for Mrs. Dowling.

Q Now, what would be the result if the last will, the one that you prepared for him, was broken, or the appeal success-

ful? What would be the result, as far as Mr. Dowling's property is concerned?

A She would get the estate.

Q She would get the entire - - -

A If - - - well, either that - - - no, no, if the last one, the one I drew, then it would revert to the previous one, and Mr. Gilman would be executor and trustee, which is just what he didn't want.

Q Is there a contest, to your knowledge? Do you know if there's a contest of the prior will now pending in Massachusetts?

A I think there is some question as to - - - not so much the prior will, as to domicile.

Q Now, I believe you stated you went to his home sometimes as many as three days a week, or three nights a week?

A Sometimes every day for a week; then, perhaps, not for a week, or one day a week.

Q What were Mr. Dowling's habits, as to where he would sit? Did he have a favorite chair he used?

A He had the only chair that he was comfortable in. It was pretty well worn, stained.

He had a TV set facing him. She used to sit alongside, when the dog permitted her, and he - - there's another thing. They had a dog there that was a member of the family; and in addition to the other odors, there was plenty of dog odor there, that was very obnoxious, and I had to put up with it in hot weather, but I sat there, sometimes for hours.

Q Did he move to any other chair while you were there?

A No. He got up and walked around; I went upstairs with him once, when he wanted to show me something, with difficulty.

Q Then, observing him, you drew the conclusion that he was mentally capable, but was not physically capable?

A Oh, I had a lot of - - - we had - - - we discussed a lot of business, and I'm no expert, but that - - - and no man who was incompetent could have gone off on and discussed the various subjects.

He did forget once in awhile, but contrary to what the expert medical testimony says, I don't count forgetfulness as incompetency. It has to fit into the entire picture; and this man was too sharp in many things to be incompetent, mentally.

Q Now, if I understood you correctly, you filed a counterclaim against Mrs. Dowling?

A Yes.

Q Now, was that successful at that time?

A I believe it was later. I think it - - - it was not disposed of when the curators were appointed, in June; I think that was left in abeyance, because we hadn't taken sufficient testimony on that phase of the case.

We were so busy with the defense on Dowling's case that we had neglected it, and at the time, as long as the curators were appointed, we felt that at least, his assets would be preserved, and that's when I bowed out.

Q Now, the - - - in other words, you were, at that point, unsuccessful on the counterclaim, and the two curators were appointed, and that was left in abeyance, or never completed, is that correct?

A Well, my feelings at the time, like we lawyers do, although I felt that she was senile, the move was a countermove; let's call it a legal maneuver, fight fire with fire. We felt that if he was going to be declared incompetent, they both should be declared incompetent to preserve the assets of both, which were intertwined, to a certain extent.

Q But you were unsuccessful in defending him from being placed under - - -

A In that no curators were appointed, but we didn't take any testimony on that.

Q On the answer in his - - - strictly in his defense, however, the curators were appointed, as we know.

A Yes, but I maintain that we prevailed, in that we fought off a - - - what he felt would have been a stigma, mental incompetency.

He was never declared mentally incompetent, and perhaps we warded it off by stipulating as to his physical incompetence, which was obvious.

Q Now, was the charge that you made to Mr. Dowling for the preparation of the will included in the \$8,000, or was that - - -

A Yes.

Q It was included in the \$8,000?

A Yes.

MR. MUSSELMAN: I believe that's all.

#### REDIRECT EXAMINATION

BY MR. SUMMERS:

Q Mr. Klein, in reference to the situation concerning the office building up in Malden, what effect did the changed condition of the lease, which was brought about by this Mr. Gilman, have upon Mr. Dowling's financial condition?

A It put him in the hole; that's why, for the first time in his life, he was unable to pay certain obligations, like taxes, which were used as the basis for the incompetency proceeding.

They claimed that he wasn't taking care of his affairs, that he was delinquent in taxes - - - I think the bill of complaint alleges that he was delinquent in taxes, that he owed on a judgment that a broker obtained against him, that he wasn't paying bills, and when we went over the thing, we discovered why, because his income had shrunk by some twenty-some-odd-thousand or more a year, which made the difference.

Q Now, when was this changed condition, in reference to this lease brought about?

A It - - - with reference to the lease, that was before the proceeding. I don't recall if it was '52 or '53 or '51, where the lease was executed to Jordan Marsh, but it took several years for the deficiency in income to take effect, and he couldn't get along.

Q Your testimony is that he could not get along on the money he was receiving with this reduced income from that lease?

A That is my recollection, but I think that the accountant's testimony, there was quite a voluminous accounting report, which would indicate it better than I could indicate it.

Q Now, one further question:

In reference to the curators for Mr. Dowling filing a petition for the appointment of curators for Mrs. Dowling, did you see anything irregular with that?

A No. It was a follow-up on mine, but as I say, I was out of the matter, and I only heard about it long afterward.

I felt that she needed somebody, whether it was mental or physical, and in addition, she didn't have the business acumen or experience in background and business experience that Mr. Dowling had.

Q Now, just what do you mean by their action was a follow-up on yours?

A Well, I had filed a cross bill, but it was - - - when I bowed out of the case - - - I bowed out of the case when the curators were appointed, and I had nothing further to do.

The - - - my cross bill was left in abeyance. It wasn't pursued to hearing and testimony, and that's the last I knew about it until I got in on the probate.

Q In other words, the effect of their petition was to renew the petition that you had already filed in the case?

A I don't know, but I assume that they pursued theirs on the basis of my original cross petition.

Q Now, one final question:

Then, in your opinion as a lawyer, was it the duty, would you consider it the duty of the curators for the husband to seek the appointment of curators for the wife, under the conditions and circumstances, such as you have related here?

A Without attempting to avoid the question, let me say that somebody should have sought to have curators appointed for the wife, in my opinion, whether it was the curators for the husband, or somebody else having an interest in the matter.

MR. SUMMERS: That's all the questions.

#### RECROSS EXAMINATION

BY MR. MUSSELMAN:

Q Are you quite certain, sir, that the Court did not order that Mrs. Dowling was competent on your counterclaim?

A No, I am quite certain - - - I mean, if I saw the record, I could tell better, but I am certain that it was left in abeyance, undecided at the time.

Q Have you heard the doctors testify about her competency, or have you seen the transcript of their testimony?

A They testified at the probate proceedings, I think, against him, and at the incompetency proceeding of Mr. Dowling, I don't recall.

By inference, I think they did testify that she was all right, but he wasn't, except - - - yes, I remember. I think it was Dr. Kells that said that she was capable of taking care of her affairs, except that he did admit that complex affairs, such as owning stocks and bonds, to the extent of a quarter of a million, or thereabouts, might be too much for her.

I recall his testimony on that score.

MR. MUSSELMAN: I believe that's all. Thank you, Mr. Klein.

MR. SUMMERS: Thank You.

CHIEF JUSTICE TERRELL: Mr. Klein - -

THE WITNESS: Yes, Your Honor.

CHIEF JUSTICE TERRELL: - - - before you leave the stand, Senator - - - just be seated, please.

Senator Kickliter, of the Court, sends up this question:

"Could you explain why the difference in fees allowed to the two examining physicians, as follows:

"Dr. Kells, M.D., \$1,175; Dr. Spirer, Ph.D., \$50?"

THE WITNESS: Well, the only two that I recall that appeared in Court on several occasions, and went into extensive reports and extensive testimony, were Dr. Anderson and Dr. Kells.

Now, there was another doctor that I got into the picture to examine Mrs. Dowling, a Dr. Gilbert. I believe he submitted a bill for a hundred dollars, which was never paid, but I don't recall this other doctor, Spirer.

He might have been in the picture after I was out of it, but I do know Dr. Anderson and Dr. Kells were in it. They made several examinations, testified at length, and appeared in Court on several occasions.

CHIEF JUSTICE TERRELL: Senator Gautier, of the Court, sends up this question:

"Were you aware of the fees awarded to the curators and others in connection with the estate of Jewell A. Dowling, and if so, in your opinion, were these fees reasonable?"

THE WITNESS: We made application for our fees shortly after the curators were appointed, and I believe several months later, in October, our fees were awarded.

As far as the question of whether the fees were reasonable, I don't think I am qualified. All I can say is I felt the fees awarded to us, in view of the work done, and the extra-curricular work that I did in visiting Mr. Dowling, that was necessary, that my fees were inadequate.

CHIEF JUSTICE TERRELL: Second question by Senator Gautier, of the Court:

"If the fees awarded to the curators in the estate of Jewell A. Dowling were not satisfactory to Mr. Dowling, was he competent to object to the same? Did he ever object to any such fees?"

THE WITNESS: Well, I never heard whether he objected. I know he was competent, but he was very peculiar with money. He was very generous at times, and he was very niggardly at other times, and it all depended on whether he liked you or didn't like you.

I don't know whether he would have objected. I mean, it's purely a speculative question.

CHIEF JUSTICE TERRELL: Senator Hair, of the Court, sends up this question:

"In your estimation, do you believe the fees allowed the curators in the Dowling estate to be fair and equitable?"

THE WITNESS: I can't say, for this reason, that I was out of the matter for almost a year. I only briefly skimmed through the file, which was quite voluminous in size, when the probate proceedings were instituted; so that I cannot tell how much or how little work was done.

I would be speculating if I made an estimate of my value on the fees.

MR. SUMMERS: Mr. Chief Justice - -

CHIEF JUSTICE TERRELL: Mr. Summers.

MR. SUMMERS: - - - one further question, please sir.

#### REDIRECT EXAMINATION

BY MR. SUMMERS:

Q But with your knowledge of Mr. Dowling, you would say that the curator - - - would you say that the curator for Mr. Dowling would be entitled to a greater fee than the curator for a more normal person?

A Let me qualify it by saying, if he kept them hopping the way he kept me hopping, they earned their fees; that's all I can say.

MR. SUMMERS: That's all.

MR. MUSSELMAN: I have one question, Mr. Klein.

#### RECROSS EXAMINATION

BY MR. MUSSELMAN:

Q I believe you stated that the petition filed by the curators to declare Mrs. Dowling incompetent was nothing more or less than a follow-up on your previous efforts by counterclaim?

A I don't know. I don't recall having seen it.

I do know that they were named curators, and I assumed that they either filed their own or followed up on mine, but I don't know even the wording of their petition. I haven't - - - I don't recall seeing it.

Q Do you recall how much their fee was, the total fees the two of them received for filing such a petition?

A No, only what I read in the newspapers. I may have seen it in the file, but I didn't pay too much attention.

MR. HUNT: Are you through?

MR. MUSSELMAN: Yes.

MR. HUNT: Thank you very much.

(Witness excused)

MR. SUMMERS: Call Mr. John Wright, please.

Thereupon,

JOHN W. WRIGHT,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Your name is John W. Wright?

A That's correct.

Q You have previously testified before this Court?

A Yes sir.

Q Mr. Wright, did you appear in the Dowling curatorship on two or more occasions, as guardian ad litem, under appointment of Judge Holt?

A I did, sir.

Q Will you give us the date of the order of Judge Holt under which you were first appointed to act as guardian ad litem in that case?

A On January 4, 1955.

Q What is the effect of the order?

A An order was entered by Judge Holt, appointing me guardian ad litem to represent Ina I. Dowling at a hearing on a petition for the appointment of a curator for Ina I. Dowling.

Q Well, now, that was January 4, 1955?

A Yes sir.

Q Will you state what, if any pleadings were served upon you at that time?

A The Petition for the Appointment of a Curator; Motion for Restraining Order; Order Directing Sheriff to Place Ina Dowling in Protective Custody; Order Directing Sheriff to Summon Heilman, the Dowling chauffeur, to hearing, and enjoining Heilman from using power of attorney given him by Ina Dowling; and Notice of Hearing.

Q Now, upon receipt of the Order appointing you guardian ad litem to represent Ina Dowling, and copies of the pleadings which you have just described, state to the Senate what you did?

A You mean in the way of pleadings, sir, or the entire - - -

Q In the way of anything.

What did you do under your Order of appointment?

A On January 5, 1955, I filed my oath as guardian ad litem.

I interviewed Mrs. Dowling on one night for a period of about two to three hours.

On the following day, which was the 6th of January, I went to the Dowling home again and remained there from approximately 4:30 or 5:00 o'clock until 2:00 or 3:00 in the morning.

The - - -

Q You went there at what time?

A Approximately 4:30 or 5:00 o'clock in the evening.

Q Who was there at the time?

A The Sheriff was there - - -

Q Who is the Sheriff?

A Bill Thompson.

Q Is he the witness who was in this room awhile ago?

A Yes sir; Daniel Neal Heller either was there at my first appearance, or came later in the evening.

There were Mr. Dowling, Mrs. Dowling, and then, there

were two other people, whose names I do not recall, but I understand that they had been put there by the Sheriff's department to care for the Dowlings.

Q Did you have occasion, on your first visit to the Dowling residence, to talk to Mrs. Dowling at length?

A I did, yes sir.

Q For what period of time did you talk to her?

A From the time I arrived until the time I left, which was approximately two or three hours.

Q That was on the first evening visit?

A Yes sir.

Q And you went back the next evening?

A Yes sir.

Q At what time?

A About 4:30 or 5:00 o'clock.

Q And stayed until when?

A Two or three in the morning.

Q Was this around the time that the Sheriff's office was endeavoring to apprehend Mr. Heilman to serve those orders on him?

A Yes sir, it was.

Q Now, did you have an occasion, during that evening, to talk to Mrs. Dowling again?

A I did.

Q Did she know you on the occasion of the second visit?

A On the second occasion, she did not know me; she had to be introduced to me, and upon the time that we appeared before the Court, she once again had to be introduced to me. She didn't know me.

Q Well, what was the subject matter of your conversations with Mrs. Dowling on those occasions, and what did you endeavor to ascertain, if anything, from her?

A Well, the purpose of my appointment was actually to represent her in a competency hearing, and to the best of my ability, as a lay person, I attempted to ascertain and to either, pro or con, convince myself as to her competency.

Most of our conversation pertained to her past. She told me of her life in Canada; she told me of the time that she attended music school. I can remember another incident, where we were on the stairway, I believe, - - - there was a large circular window on the stairway, or one there in the bedroom, where she showed me the canal, and she told me she had been raised near water, that she enjoyed water, and that's why she enjoyed this home so much.

Most of her talking was of the past, and then this incident with Mr. Heilman.

Q Do you recall where she said she had attended music school?

A No sir, I do not.

Q Well, after you had visited her, then, on those two evening occasions, did you or not then file pleadings in the Court?

A I did.

Q What did you file?

A On January 7, I filed before the Court Motion to Dismiss Petition for Appointment of Curators; Motion for Order Requiring More Definite Statement to Petition for Appointment of Curator; Motion to Suppress Findings of Court Appointed Physicians; Answer to Petition for Appointment of Curators to Affirmative Defenses.

Q Well, were you aware, at the time of filing those pleadings, that the Court-appointed physicians had filed a report upon the question of Mrs. Dowling's competency?

A I don't remember whether I do or not. I do know that I do have in my file the report that was sent to me by the physicians.

Q But you filed a motion to suppress their findings?

A Yes, I did, and that was based mainly upon the fact that some months prior, there had been other physicians who had examined Mrs. Dowling, and had filed their reports.

Q Well, when you filed the motion to suppress the findings of the Court-appointed physicians, did you assume what those findings would be?

A No sir, I did not.

Q Well, had you been served with a copy of those findings?

A Yes sir.

Q Do you recall who furnished it to you?

A The findings of the physicians were sent to me by the individual physicians.

Q By the physicians themselves?

A That's right. They sent me copies of the originals that they filed in the Court file.

Q Now, will you state to the Senate the happenings at the hearing before Judge Holt upon the issues at that time?

A As best that I can remember, the - - - I first entered my motions before the Court, and at that time requested argument.

Mr. Prunty suggested at that time that the Court wait and hear the arguments after they had heard - - - after the Court had heard the evidence of the witnesses that they were to present on her competency.

Those witnesses were heard. There were two physicians

Q Do you recall whom they were?

A I could tell by looking in my file.

Q Very well. Go ahead.

A You want me to look?

Q No.

A And neighbors of the Dowlings; and I believe that the Sheriff's deputy testified - - - I'm not positive as to him; and I believe that there were other witnesses who also testified.

I then again renewed my motion at the end of all of the testimony that was presented, to be heard on the motions that I had filed, and the motions were denied.

Q The motions were denied?

A That's right.

Q So, the doctors both filed written reports and appeared before the Court in person, and testified?

A Yes sir.

Q All right. Did you come to any conclusion as to Mrs. Dowling's competency as a result of your personal visits with her, and the testimony of the medical experts, and the neighbors, to which you have referred?

A I would say that she was incompetent. I based it upon the examination of the physicians, who were both reputable, competent doctors in the Miami area, upon the testimony of other lay witnesses, and in my own mind, I was influenced by the fact that she couldn't remember me, that each time she had to be reintroduced to me.

Also, her conversation, a great part of it, was in her past life, and not in the future or the present.

Q Did she make any statements to you about Mr. Heilman at that time?

A Yes. She used British term that he was "No bloody good," which is equivalent in our language to an S.O.B.

She told me that he had exposed his parts before her. She was - - - told me that he was taking all of her money, and that he was misusing her.

Q As a matter of fact, were you present or not when different checks, dividend payments, made out to both Mr. and Mrs. Dowling, were found in Heilman's room?

A In fact, I found them.

Q You found them?

A I found them and held them in my custody.

Q What did you find? Do you recall the approximate amount of those checks?

A No sir. They were actually small amounts. None of them were large dividend checks.

Q You took those and accounted for them - - -

A Yes sir.

Q - - - to the Court?

A Yes sir, I did.

Q Where did you locate them?

A In his room and about the house; some of them in the entrance where there was a small desk, and she kept some of her papers in there.

Q Did Mrs. Dowling say anything to you, or in your presence, about Heilman opening the mail?

A No sir, she did not.

Q Did she state anything in your presence about her attitude toward Mr. Heilman, being around him?

A I gathered, from her conversations, that she had no love for him whatsoever; in fact, she hated him.

Q Now, what was the effect of the order entered by the Court at the time your motions were overruled, with particular regard to continuing your services?

A I was to continue as guardian ad litem and to assist the curators in the collection of any and all other assets, wherever they may be located.

Q Well, did you, about that time, or did you, previously, undertake to determine anything about her assets, and where they were located?

A Not up until the time of the order appointing the curators, because there were only one or two days elapsing between the time I was appointed and the time that the hearing was held, and everything was in turmoil and confusion.

For instance, the night that I appeared in the Dowling house for a long period of time, people were coming and going, people from the Sheriff's office.

There was a long distance call from Boston, I believe.

There was conversation held between the Sheriff and other members of the department, and everything was in turmoil.

It was not until after the order was signed that I actually assisted in collecting some of the assets of the Dowling estate.

Q Well, state what you did, Mr. Wright, towards assisting in collecting assets?

A Mr. Heller and I made a trip to Boston, and - - -

Q Do you recall when you went to Boston?

A On the 8th of January.

Q January 8?

A Yes.

Q Go ahead.

A And - - -

Q How long were you up there?

A If I remember correctly, we were there for a period of three days.

Q What did you do during that time?

A Well, I know one of the things, that I did not do personally, but which I did see done, was that Mr. Heller attempted to get in contact with the stock broker.

He tried first locally, in Boston, and was able to ascertain that the broker was out.

Q What stock broker was that?

A Mr. Emory, I believe his name was, or Emerson, something of that nature, that was handling all of the stocks for the Dowlings.

Q Is he the one whom this man, Heilman, had instructed to sell the \$20,000 of her securities?

A Yes sir.

MR. MUSSELMAN: I'm going to object to that, please, Your Honor. We'd like to have more direct testimony from this witness.

BY MR. HUNT:

Q Do you know that of your own knowledge, Mr. Wright?

A I know that from the conversation that was held in my presence - - -

MR. MUSSELMAN: That conversation would be hearsay, I believe, Your Honor.

CHIEF JUSTICE TERRELL: Testify what you know, Mr. Wright, and not what someone told you.

THE WITNESS: Well, I did not make the telephone call; Mr. Heller did.

BY MR. HUNT:

Q Did you have occasion to talk to this stock broker - - -

A No, I did not.

Q - - - in Boston?

A No.

Q Go ahead. What did you do in Boston?

A After that, we held conferences with the attorney, Mr. Meserve, I believe his name was. We met him on Sunday and talked to him for, maybe, two hours.

Q On Sunday?

A Yes, about the affairs of Mrs. Dowling.

It was then that we were able to ascertain that a conservator - - - conservator - - - conservatory for the State - - - whatever they call it in Massachusetts, equivalent to our curatorship here in Florida, was to be appointed that afternoon, that is, Monday afternoon; and it was then that Mr. Heller employed an attorney there in Boston to represent the curators before the Boston Court.

Q What else did you do in Boston?

A On Monday morning, I gathered from the banks approximately \$4,500 to \$5,000 worth of assets and returned them to Florida.

Q I can't hear you.

A I gathered, on Monday morning, approximately \$4,000 to \$5,000 worth of assets and returned them to Miami.

Q How did you gather those assets? Where did you find them?

A I went to the different banks in Boston, in the Boston area. I had been supplied by Mr. Heller, on the 6th day of

January, a list of all the stock companies and all the banks in the Dowling estate. Also, I found, among her personal belongings, bank books for the Boston area, as well as for the Miami Beach area and the Miami area.

On the 6th of January, I notified all of the stock companies, telling them not to sell any more stocks to anyone. I sent them all, each, individually, night letters; and while in Boston, I went to the different banks to ascertain whether or not any of the assets had been removed by Mr. Heilman or anyone else in that area.

Q Well, did you find whether or not Mr. Heilman had removed any of the assets?

A The only assets that I found was the \$20,000 that you spoke of, that had been sold by Mr. Emory. I found none other in the Boston area.

Q What else happened in Boston on that occasion?

A Other than the conferences that we held with the attorney that Mr. Heller hired for the curators, that's all that I can recall.

Q Was there a hearing on that Monday, before the Court?

A There was, but I did not attend it.

Q I see. Well, then, you returned to Florida with somewhere between \$4,000 and \$5,000 in assets belonging to Mrs. Dowling?

A Yes sir.

Q Did you account to the Court for those assets?

A I did, sir.

And also, on the following day, or two or three after my return, I made a survey of the Miami Beach and Miami banks, to see if any of the assets had been removed.

Q Now, what next happened in connection with the litigation, so far as you were personally concerned, Mr. Wright?

A The next thing that occurred was a hearing before the Court on fees, and that was held on the 27th of January, 1955.

Q Were there a number of fees involved in that hearing, or only your own?

A There were at that time the fees for the curators; there was Mr. Prunty's and Mr. Heller's, and then my own fee.

Q Did the Court enter an order awarding you a fee and discharging you from further service?

A It did, sir.

Q What was the effect of the order, as to amount?

A \$2,000 for myself.

Q Now, that was in the latter part of January.

When did you next have occasion to reenter the Dowling case?

A I reentered the Dowling case on May 5, 1955.

Q In what capacity?

A I was appointed, once again, guardian ad litem for Ina I. Dowling to represent her at a hearing for the entry of a judgment against her for the improvements made to the house.

Q What was the crux of the petition which the curators had filed on that occasion?

A Well, I don't remember all of the details of the petition.

Q Well, could we shorten it by saying that they filed a petition for instructions, setting up the improvements that they had made to her property out of Mr. Dowling's estate - - -

A Yes.

Q - - - and requested instructions as to whether or not



the Court should enter a lien on Mr. Dowling's behalf, against Mrs. Dowling's property, in the amount of the improvements?

A That's correct.

Q What position did you take at the hearing? Did you file any pleadings?

A On the 9th - - -

Q Let me ask you, first, what papers, if any, were served on you?

A The Interim Report to the Court and Petition for Ratification.

Q And what did you do?

A On May 9, 1955, I filed my oath as guardian ad litem. On May 11, 1955, I filed a motion to dismiss the foregoing petition of the curators, together with his answer to the petition.

Q That's your answer to the petition?

A Right.

Q Briefly, on what ground did you base your motion to dismiss? Do you have it before you?

A I have them with me, yes sir.

"1. That this Court is without jurisdiction of the person or subject matter of the petitioner, and is without power or authority to entertain or adjudicate the same.

"In support thereof, your petitioner would show that the domicile of Jewell Alvin Dowling and Ina I. Dowling, his wife, is that of the State of Massachusetts, and that said state has been their domicile for numerous years; that it has been their habit to visit the State of Florida during the winter season for many years, and that it has never been their intention to become permanent residents of the State of Florida.

"Wherefore, John W. Wright, as guardian ad litem for Ina I. Dowling, incompetent, protests the jurisdiction of the court in the above entitled cause to entertain or adjudicate the matters and things set forth and contained in said petition, and for want of jurisdiction on the grounds set forth, moves that said petition be dismissed with prejudice, and at the cost of the petitioner."

Q Now, did you also file an answer?

A I did, sir.

Q Can you state, briefly, without reading it, Mr. Wright, the effect of your answer?

A In one paragraph I stated that the improvements were unnecessary; that the home of the parties thereto is more than lavish, and ample for their needs; "that the said home could still have commanded a considerable sum of money at public sale without the expenditure of large sums of money required for the repair; that there is no logical basis in said petition for the purchase of a \$6,000 Cadillac automobile"

Q Was this addressed to a petition to fix a lien on the house, or to some kind of an interim report?

A It was - - - actually, it resolved down to fixing the lien on the house.

Q Yes. You protested the purchase of the Cadillac?

A Yes sir.

Q All right, what did you do about the lien?

Can we say that you defended against the right of the curators for Mr. Dowling to have a lien for some \$50,000 against Mrs. Dowling's property for the improvements which had been purchased by Mr. Dowling's money?

A Well, that comes into the next paragraph.

Q Well, is that - - -

A Yes, that is the main gist of the - - -

Q Does that, briefly, state it?

A Yes. It comes into my next paragraph here, after I contested the purchase of the Cadillac.

Q Was the Court - - - was that heard before Judge Holt?

A Yes sir.

Q Was there any argument had on it?

A Yes sir.

Q And what did Judge Holt rule?

A Judge Holt ruled that no lien could be assessed against Mrs. Dowling's estate.

Q Judge Holt ruled with your position?

A Yes sir.

Q And he dismissed the petition on that point, is that correct?

A Yes sir, he did.

Q He refused to approve the entry of a lien against her property?

A Yes sir.

Q Did the curators take any vigorous position on that matter, or submit it for adjudication, as to whether or not a lien should be entered?

A Yes sir, they did. It was, I would say, a hotly-contested action between us.

In fact, I informed the Court, in a polite, law-like manner, that I thought that if he allowed the judgment to be entered, that it was an appealable offense, and that the Supreme Court would uphold it.

Q Well if a judgment had been entered against Mrs. Dowling's property, would you have appealed?

A Definitely.

Q Now, what did you do after that?

A After that hearing? Nothing.

Q Did you, in June, seek compensation for what you had done, with - - -

A Yes sir - - -

Q - - - relation to - - -

A - - - I did.

Q - - - the filing of pleadings and the contesting of the petition of the curators?

A I petitioned the Court for fees, and a hearing was held, and I was awarded \$950.

Q \$950?

A Yes.

Q Were you then discharged for the second time as guardian ad litem?

A Yes sir, I was.

Q And did that make a total sum received by you of \$2,950 in - - - for all your services in the Dowling case?

A Yes sir.

MR. HUNT: That's all.

#### CROSS EXAMINATION

BY MR. MUSSELMAN:

Q Mr. Wright, you were appointed once more, but you didn't perform any services, isn't that correct?

A Yes sir. I was informed of that fact before the Grand Jury of Dade County. Mr. Weissbuch asked me if I had been appointed - - -



Q Well, what I asked you is correct; you were appointed, isn't that right?

A Yes.

MR. HUNT: I'd like the witness to answer, Mr. Musselman.

MR. MUSSELMAN: I think he answered the question.

MR. HUNT: I don't think he finished.

Had you finished your answer, Mr. Wright?

THE WITNESS: No sir, I hadn't.

MR. MUSSELMAN: I believe, Judge, that the answer that he's attempting to give now is not responsive to the question.

MR. HUNT: Your Honor, counsel never gets entirely the answer that he would like to have.

Now, the witness is entitled to explain his answer.

CHIEF JUSTICE TERRELL: Mr. Wright, will you explain your answer?

THE WITNESS: At the time that I appeared before the Grand Jury, Mr. Weissbuch asked me if I had been appointed more than twice - - -

MR. MUSSELMAN: Your Honor, may I please enter another objection to this?

It's argumentative. I think he can answer it simply by "yes" or "no." He's going into a lot of extraneous matters that have no place in this hearing.

CHIEF JUSTICE TERRELL: Don't explain by hearsay or by something that has no relevance whatever to the question, Mr. Wright; just explain what you know about this.

THE WITNESS: That's what I'm trying to explain, Your Honor, as to what I know, and how I found out about the third appointment.

MR. HUNT: Go ahead.

THE WITNESS: While before the Grand Jury - - -

MR. MUSSELMAN: I think the Court can be refreshed in the matter if my original question could be asked once again.

I believe - - -

CHIEF JUSTICE TERRELL: Ask your question again.

MR. MUSSELMAN: Would the Reporter please find my original question which precipitated this?

The Reporter then read the following questions and answers:

"Q Mr. Wright, you were appointed once more, but you didn't perform any services, isn't that correct?"

"A Yes sir. I was informed of that fact before the Grand Jury of Dade County. Mr. Weissbuch asked me if I had been appointed - - -

"Q Well, what I asked you is correct; you were appointed, isn't that right?"

"A Yes."

MR. MUSSELMAN: That's all I wanted to know, Your Honor.

BY MR. MUSSELMAN:

Q Mr. Wright, when you were operating as guardian ad litem, did you represent your Ward at the hearing where the fees were under discussion?

A I did.

Q Did you make any contest, or did you figure it was in the purview of your duty to make any contest as to the reasonableness of the fees?

A I made no contest as to the reasonableness of the fees.

The - - -

Q Did you enter any protest to the Court as to the amount of the fees that he awarded - - -

A I did not.

Q - - - that the Court awarded?

A I did not.

Q Was there any testimony or other proof taken at the time the fees were awarded, as to the reasonableness of the fees?

A As it has always been customary before Judge Holt and other Judges in the Circuit, you present a petition. If the Court requires expert testimony, you bring it in; you bring in expert witnesses.

Usually, the Court will make extensive inquiry into the petition, and will make a decision upon the question and upon the results of the inquiry held at that time.

Q Was there any such testimony taken at the hearing?

A You mean in the way of expert testimony?

Q That's correct?

A No sir, there was not.

Q At the time of the hearing on the interim report, the money that was spent for the house, or on the house, had already been spent, isn't that correct?

A That's correct.

Q And they were asking the Court at that time to ratify their actions, or - - - and to impress a lien?

A That's correct, against Ina I. Dowling.

Q Did the Court ratify the acts of the curators in expending these sums?

A Yes, they did.

Q But refused to impress the lien, is that correct?

A That's correct.

Q When you were in Boston, Mr. Wright, did you travel with Mr. Heller?

A I did.

Q Where did you and Mr. Heller stay in Boston?

A You know, that's a difficult question to answer. I don't remember.

Q Did you stay in a hotel - - -

A Yes, - - -

Q - - - or with friends?

A - - - he was familiar with Boston; I had never been to Boston before, and he picked the hotel.

Q You don't recall the name of the hotel?

A No sir, I do not; that's been over two years ago.

MR. MUSSELMAN: I believe that's all.

MR. HUNT: That's all, Mr. Wright.

CHIEF JUSTICE TERRELL: Mr. Wright - - -

MR. HUNT: Excuse me. Keep your seat, please sir.

CHIEF JUSTICE TERRELL: - - - Senator Connor, of the Court, sends up this question:

"Why, as guardian ad litem, did you not have Mrs. Dowling examined by competent physicians?"

THE WITNESS: Because I felt that the competent physicians that had been appointed by the Court were sufficient, and that any expenditure upon my part would be only additional cost to the estate.

CHIEF JUSTICE TERRELL: A second question by Senator Connor:

"Who got the money for the \$20,000 stocks that were sold in Boston?"

THE WITNESS: To the best of my knowledge, Mr. Heilman did.

CHIEF JUSTICE TERRELL: "If Mr. Heilman got the money illegally, why was he not prosecuted?"

THE WITNESS: Because he couldn't be found.

CHIEF JUSTICE TERRELL: Senator Stratton, of the Court, propounds this question:

"When you went to Boston to see about the Dowling's assets, was this before or after the stocks and bonds were turned over to her attorney, Mr. Lane?"

THE WITNESS: This was after. I was not appointed any time during the time that Mr. Lane was in the case.

Mr. Lane, if I recall correctly, entered the case with Mr. Jewell Dowling, and that's the first time that there was an attempt to declare Mrs. Dowling incompetent; not at the second time, Mr. Lane was not in the case at all.

CHIEF JUSTICE TERRELL: Senator Johns, of the Court, propounds this question:

"Who is Mr. Weissbuch that you mentioned a few minutes ago?"

THE WITNESS: Mr. Weissbuch, I believe he's referring to, was the special counsel to the Grand Jury in the fall term of 1956.

CHIEF JUSTICE TERRELL: That's all.

#### REDIRECT EXAMINATION

BY MR. HUNT:

Q Was that the Grand Jury that returned a report on April 30, 1956?

A That is correct, sir.

MR. HUNT: That's all.

MR. MUSSELMAN: No further questions.

(Witness excused)

MR. HUNT: Will you call Mr. Mershon, please.

Thereupon,

MARTIN LUTHER MERSHON,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

#### DIRECT EXAMINATION

BY MR. SUMMERS:

Q Sir, will you please state your name to the Senate?

A Martin Luther Mershon.

Q Where do you reside, sir?

A I live in Coral Gables, but have my office in Miami.

Q What is your occupation, sir?

A I'm a lawyer.

Q How long have you been engaged in practice, sir.

A Since 1912.

Q Do you practice privately, or with a firm?

A I'm a member of a law firm.

Q What is the name of the firm, sir?

A Evans, Mershon, Sawyer, Johnston & Simmons.

Q Where is the firm located?

A On the 10th floor of the First National Bank Building, in Miami.

Q Sir, have you ever had any positions with the Dade County Bar Association?

A Yes sir, I've had several.

Q Would you mind naming them, briefly?

A For a number of years, I was - - - served on the Grievance Committee; and in 1932, I was president of the Dade County Bar Association; and for varying periods, prior to twelve or fifteen years ago, I was on the Board of Directors.

Q Have you ever held any state positions?

A I've held several honorable, honorary and non-paying positions with the State, yes sir.

Q Will you please state those, sir?

A I served an unexpired term of approximately three and a half years on the Florida State Board of Law Examiners, beginning, I believe, in 1930.

I was appointed a commissioner on the National Commission of Uniform Laws; I served about three or three and a half years; also, an unexpired term on the Florida State Board of Control.

Q Now, when did you serve on the Board of Control?

A That was from around January, 1944, to June, 1947.

Q Now, Mr. Mershon, you have had occasion to appear before Judge Holt in relation to some phases of the Dowling case, is that correct?

A Yes sir.

Q Will you state briefly what the first occasion was that you were before him?

A I represented a lady, a Mrs. Bickford, in a proceeding initiated by an order, or rule to show cause, issued by Judge Holt.

Q Now, when was that order issued, sir?

A It was in January of 1955.

Q Do you know why it was issued?

A To the best of my recollection, it was based upon an interference by Mrs. Bickford with the jurisdiction of the Circuit Court for Dade County over the person of Mrs. Dowling, who was then in protective custody of that Court.

Q Was there a petition for a rule to show cause?

A I think it was of the Court's own motion.

Q Will you state briefly, sir, the reason for the rule to show cause?

A The first rule to show cause was an order, directing the Sheriff to take her into custody and require her to be before the Court and show cause why she should not be adjudged in contempt because of - - I don't remember the rest of it, but at the hearing, it developed that Mrs. Bickford, who was a resident of Boston, Massachusetts - - -

MR. HUNT: Mr. Mershon, would you hold up just a minute? I think Senator Davis has a motion to make.

SENATOR DAVIS: Mr. Chief Justice - -

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: - - - I understand from the Defense that this witness will just be on the stand a very few minutes. However, one of the members of the Senate has an emergency telephone call, and I move that we stand in recess for five minutes.

CHIEF JUSTICE TERRELL: The request is granted. Court will be at ease for five minutes.

Whereupon, the Senate stood in recess from 5:45 o'clock to 5:50 o'clock, p.m.

CHIEF JUSTICE TERRELL: Order in Court. The Chair declares a quorum present.

BY MR. SUMMERS:

Q Will you please continue, Mr. Mershon?

A During the recess, I have been shown, in the record of the Dowling case, a petition to the Judge, signed by John W. Prunty, asking for a rule to show cause, and a short order or rule to show cause, which advised Mrs. Bickford to show cause why she should not be held to be in contempt of the orders of this Court. I had forgotten about the petition until I had seen it.

Mrs. Bickford was a resident of Boston, Massachusetts. She was a widow. Her husband had been a securities dealer, or investment house, who had handled the securities for Mr. Dowling during Bickford's lifetime. The Bickfords and the Dowlings were, so I was informed, close personal friends.

The Dowlings had resided in Boston, and had their winter home in Miami Beach.

Mrs. Bickford, with the approval of Mrs. Dowling, came to visit Mrs. Dowling in her home in Miami Beach. The record showed, to the best of my recollection, that at the airport, Mrs. Dowling, along with Mr. Thompson, the Deputy Sheriff, met Mrs. Bickford. They proceeded to take her over to the Dowling home, where Mrs. Bickford stayed as a guest.

The Deputy Sheriff, Thompson, testified that he told Mrs. Bickford, when he first met her at the airport, that Mrs. Dowling was under curatorship, and could not sign any papers.

Mr. Prunty testified before Judge Holt that he also had informed Mrs. Bickford that Mrs. Dowling, being under curatorship, could not and should not sign any papers.

At the hearing, in addition to Mr. Prunty and Mr. Thompson, the Deputy Sheriff, Mr. Heller testified, and then Mrs. Dowling - - - I mean Mrs. Bickford testified. She made no effort to conceal anything that she had done, so far as I know.

She stated that when she left Boston to come to Miami Beach, that the Boston lawyer - - - I think Mr. Meserve - - - had given her these papers and asked her to have Mrs. Dowling sign one, which later turned out to be a request by Mrs. Dowling, the incompetent, to the Boston Court to appoint someone in Boston - - - I think Mr. Emory - - - who had succeeded Mr. Bickford in handling the Dowling securities, to appoint Emory conservator in Massachusetts.

The other was a form of examination, going to Mrs. Dowling's mental condition, and Mrs. Bickford had arranged with a doctor to see Mrs. Dowling; she had arranged to get Mrs. Dowling to the doctor; the doctor had filled out the report; and Mrs. Bickford had, without the knowledge of those around Mrs. Dowling, gone out, so the record would show, to the airport and mailed those papers back to the lawyers in Boston.

Mrs. Bickford testified before Judge Holt that she had no personal interest in the matter, that she did not know what was in the papers.

Again, I say I have not reviewed the transcript, and of course the transcript controls, but to the best of my recollection, Mr. Heller had just gotten back from Boston, and he had either seen or heard of these papers up there, and presumably, that was the reason why the petition was filed and the writ was issued.

Judge Holt stated that it was inconceivable that Mrs. Bickford would not know what was in the papers that she caused to be signed. He adjudged her guilty of perjury. He held her in contempt of the Court.

Q Now, after he adjudged her guilty of perjury, and in contempt of Court, what happened?

A He caused the word to be sent to the Sheriff's office for a Sheriff, or a Deputy, or a Bailiff, and I believe he sentenced her to, I think, sixty days in jail.

I requested that, after stating my grounds for dismissing, that is, quashing the ruling, which was denied, and after imposition of sentence, I asked Judge Holt if he would fix supersedeas bond, which he declined to do. I then asked him if he would release her in my custody for an hour or so, in order that she might arrange her affairs.

He stated that the Sheriff would take care of that.

There were some neighbors of the Dowlings in the Court

Room, and Mrs. Bickford turned over to the neighbor her furpiece, and possibly her pocketbook or some other personal belongings, and she went away with the Sheriff, or the Deputy.

I did not see her in jail. I do not know where or how she was kept in custody. She later told me that they had been in the - - - that is, the folks in charge of the jail, had been kind and considerate toward her.

I telephoned Mr. Meserve, of the Boston law firm, who were representing the Dowling assets in Boston, and who presumably had asked Mrs. Bickford to get these papers signed, and told him what had happened.

I told him - - - asked him if he wanted us to undertake to appeal this order, and that it was an urgent matter, and would require Tallahassee counsel, and he authorized me to proceed.

I communicated with a lawyer in Tallahassee, impressed him with the urgency of the matter, and talked with him several times, and the earliest appointment he could get with the Court, the Supreme Court of Florida, was for the following day, I believe, at 10 o'clock.

In the meantime, while I was carrying on this conversation, I had lawyers in my office preparing papers for an appeal. The - - - it came 4 o'clock. I hadn't seen my client since the morning, and it was very apparent that unless something were done, that this woman, who was and is a refined gentlewoman, would have to spend the night in jail, even if it were possible for us to fly up to Tallahassee the next day and arrange a supersedeas bond.

I also had some personal misgivings that even though we should succeed in obtaining a supersedeas and releasing her presently from custody, I was not entirely certain that there may not have been a technical contempt of the orders of the Court under that record, as it stood, and at the same time, I was impressed with the good faith of this woman who, after all, was simply doing a favor for the lawyers, whom she trusted, and who sent her down here with the papers, or sent the papers with her to Florida.

So, faced with that prospect, and believing that Judge Holt was unduly harsh, and had been unduly - - - let me say, influenced against her that morning at the hearing as the record developed, I went down to his office and asked the secretary if I might see him, and she announced me, and I went in to see Judge Holt.

He was calm and courteous, polite and relaxed. I explained to him that I came down to talk to him about the order that he had entered that morning, that I hoped that he would not take offense, I didn't expect him to, if I knew him, and that I wanted to go into the situation with him.

I pointed out to him that I felt that the order was unduly harsh, directed at a victim of circumstances, rather than those who might have known better; that this lady was a lady, and that I didn't feel that he wanted her to spend the night in the County Jail with prostitutes, drunks, dope addicts and others of that ilk who would be found there; I would appreciate it if he would release her in my custody until we should obtain a supersedeas at the hearing set for the following day.

Judge Holt stated that he did not take offense, that he hoped the time would never come when he would be above criticism, or where those members of the Bar who had confidence in him, and in whom he had confidence, could not approach him and tell him frankly if they thought he had made a mistake, and why, and that he appreciated my coming down and talking with him.

He furthermore reviewed somewhat the differences, the - - - not animosities or contentions or controversies, that had existed between the Boston lawyers and the Boston interests, and the Florida curators, Florida lawyers, and the Florida interests, and said that his chief concern was the welfare of Mrs. Dowling and the orderly and friendly cooperation of the Massachusetts courts and its representatives, and the Florida court and its representatives.

He stated that he would be willing, not only to release her to me overnight, but to release her entirely if I wanted

him to, and that if I would assure him that, I would use my best offices toward promoting a friendlier relationship and cooperation between the Massachusetts lawyers and the Florida lawyers, curators, and the respective courts.

I told him I would be glad to do that in any event, to give him that assurance. Whereupon, he called the Sheriff's office, or the Jailer's office, and asked that Mrs. Bickford be brought into his Chambers. She was brought in in a few minutes by a female deputy.

Judge Holt explained to Mrs. Bickford that she was - - - at my request, she was being released, that he felt that she had made a mistake. He was not then certain that she was entirely to blame, but he felt the Boston lawyers were more to blame than she was.

That was about 5:30. She had been actually in custody from about 11 o'clock, I would say, until about 5:30.

She called a taxi from my office and went over to Miami Beach, and sometime the next day, or the day after, went back to Boston.

No formal order was entered at that time. I told Judge Holt that I would prepare and present an order, and in the next two or three days, I prepared a formal order, took it down and left it with Judge Holt's secretary. After waiting a week or ten days, I started checking up to find out if it had been signed, and found out that it had been misplaced.

In the meantime - - - I'm not sure of the sequence of events, but in the meantime, Judge Holt was a member of a special committee who was quite active in investigating the various forms of metropolitan government adopted and used by cities other than Miami. The committee was the Metropolitan Government Committee, designed to make recommendations for home rule in Dade County, and he was away for a week or ten days in that connection.

I prepared another order and left it with the Judge's secretary. Not having heard from it for several days, I inquired from Mr. Prunty if he knew about it, and he told me that he understood that Mr. Heller was trying to revise the form of order to simply suspend the punishment. Whereupon, I prepared another order, setting everything aside for reasons which the Court deemed sufficient, setting aside the conviction of perjury, and forever dismissing and quashing the contempt; took it down to Judge Holt's office, and he promptly signed it, and it was filed for record.

Q Now, Mr. Mershon, Judge Prunty and Mr. Thompson both testified before Judge Holt that they had advised this refined and gentlewoman not to have Mrs. Dowling execute any paper?

A My recollection is that they both testified that they advised her and told her clearly that Mrs. Dowling could not legally sign papers of any kind because she was under curatorship.

Q But notwithstanding that advice or information from Mr. Prunty and Mr. Thompson, she proceeded to have her sign the papers?

A So she stated. I requested her to tell the truth, the whole truth and nothing but the truth, because I would rather she be penalized for contempt than put in jail for perjury.

Q Now, you stated that Judge Holt refused bail, I believe was the expression you used.

Was that the first time that had ever happened to you in a contempt case, in your experience?

A No sir. I think it's customary in contempt - - - the average contempt proceedings of that type to let the victim get his supersedeas from the Supreme Court.

Q What is the usual, customary means for the Court to punish for wilful and direct violation of its order?

A Well, I think it can either be a fine, or it can be an attachment and imprisonment, but in any event, usually, it's upon a judgment of contempt, whether it be by fine or imprisonment.

Q Mr. Mershon, when was the next occasion that you had to be before Judge Holt in the matter?

A Following the contempt proceedings, I had numerous conferences with Mr. Prunty, and some with Mr. Heller, and with the New York lawyers, I being the associate of - - - I mean, the Boston lawyers, their associate, on details of the administration, and in August, I was informed that cousin of Mrs. Dowling, a Mrs. Irons, wanted to come to Miami to see just what the situation was, how Mrs. Dowling was being cared for and being treated, and that she came at her own behest and the behest of numerous cousins in Massachusetts, all of whom were interested in the welfare of Mrs. Dowling.

Q I'll ask you this, sir: Was Mrs. Irons interested in having Mrs. Dowling return to Boston with her?

A Yes. She came, among other things, for the purpose of finding out if Mrs. Dowling could go back to Boston and visit Mrs. Irons there during that summer.

Q Did you obtain permission for Mrs. Dowling to return to Boston with her?

A Mrs. Irons had full access to Mrs. Dowling, visited in her home, talked to Father Barrie about her, talked to the doctors and to the curators and to me, and had a conference in Judge Holt's office, where Mrs. Irons, doctors, Jack Wright, Mr. Prunty, Mr. Heller and I were all present before Judge Holt.

Judge Holt announced that it would be perfectly agreeable for Mrs. Irons to take Mrs. Dowling back with her to Boston to visit her, provided that a suitable nurse accompanied Mrs. Dowling on the train.

Q Now, did Mrs. Dowling return to Boston with her?

A Mrs. Irons, after that, came to the conclusion, her own conclusion, that it would not be wise for her to undertake to have Mrs. Dowling visit with Mrs. Irons in her home at that time, in Mrs. Iron's home, which, I understand, was an apartment in Boston.

At that time Mrs. Irons stated to me that she would report to the lawyers and her cousins that she thought everything was being done for Mrs. Dowling that could properly be done.

Q But Judge Holt did give his consent for her to return?

A He did.

Q And Mrs. - - -

A And that was around August 10, 1955.

Q And what was the reason that Mrs. Irons decided that she didn't want her to go?

A Well, it was rather late in the summer, for one thing, and she was not sure that in her apartment, that it would be best for Mrs. Dowling or her to have Mrs. Dowling living in her apartment.

Q Do you know if any other cousins have ever tried to obtain permission to take Mrs. Dowling to Boston?

A No sir.

Q Do you know of any occasion when permission to remove her to Boston was denied?

A No sir, I have had nothing to do with it since that time.

Q Now, when you spoke of Judge Holt being out of town, studying other municipal governments, do you know whether Judge Holt was chairman of the - - - took charge of the committee or not?

A I believe he was. I think he was chairman of one of those original committees, which did a lot of research, a lot of traveling, perhaps to California and to Canada.

MR. SUMMERS: You may inquire.

#### CROSS EXAMINATION

BY MR. JOHNSON:

Q Mr. Mershon, I'll try to be very brief, but there are a few questions I want to ask you.

Now, I believe you testified that the rule to show cause issued by Judge Holt, commanded Mrs. Bickford to show cause why she should not be adjudged in contempt of court for disobeying the orders of the Court. Is that correct, sir?

A That's the way the order reads, yes sir.

Q Well, now, did I understand, from your testimony, that there were no orders of the Court, like forbidding her from doing that, but only the instructions from the curators?

A Well, I didn't see any orders.

Q You know of no such order, do you, sir?

A The hearing turned on the testimony and the assumption that an order had been issued, placing Mrs. Dowling in protective custody, and the appointment of Mr. Thompson, the Sheriff, to be at Mrs. Dowling's home and look after her.

Q Now, you testified that the curators presented the petition and appeared to urge it upon the Court, is that right, sir, the petition to have Mrs. Bickford adjudged in contempt of court?

A They were both present and both testified.

Q Did Mr. Heller appear to be the moving party, primarily?

A That's the impression I gained, yes sir.

Q I understand that after you went back to see Judge Holt, some six hours after this lady had been incarcerated, that he suggested that you use your offices to get better cooperation between the Massachusetts lawyers and the Florida curators, is that correct?

A Yes.

Q Is it a fair statement to say that the lack of cooperation between the Boston lawyers and the Florida curators meant that the Boston lawyers refused to agree to turn over the assets of the estate to Daniel Neal Heller and his co-curator?

A Well, that's just one - - - as I understand, that's just one factor, one facet - - -

Q But that was in court - - -

A - - - of the struggle over the assets existing in Florida and in Massachusetts, the Massachusetts lawyers looking after the Massachusetts assets and the Florida lawyers looking after the Florida assets, and a couple under curatorship who had, for many years, been residents of Massachusetts, but who, for a number of months, had been continuously in Florida.

I have made no effort to examine the file, and I don't believe I am capable of answering your question directly on that.

Q Yes sir. It's your understanding, though, from the testimony of Mr. Heller at the hearing, that part of his displeasure with Mrs. Bickford is that he felt her actions had kept him from getting his hands on the Boston assets?

A I definitely got the impression.

Q You got that impression?

A Yes sir.

Q Now, Mr. Mershon, you testified that Judge Holt found this lady guilty of perjury?

A Definitely.

Q Without affording her the right to be - - - have an

indictment entered against her, and the right to a jury trial, is that correct, sir?

A Well, he said she had been guilty of perjury, that he believed that she knew what was in the instruments.

Q In your opinion, based upon your personal observation of her and your counseling with her and your appearance at the hearing, in your opinion, was she guilty of any improper motive in doing what she was doing?

A I'm not an expert on motive. I don't know.

Q All right. Well, let me ask you this question, sir:

Did she appear to be telling the truth in her testimony before Judge Holt?

A She - - - I thought she was telling the truth, because she admitted so many things against herself.

When you talk about motives, I think her primary motive, or purpose, was doing a favor for the Boston lawyers and Mr. Forrest Emory, a former associate of her husband, and I think that she felt that she was working for the best interests of the Dowling assets in Massachusetts.

On the other hand, you could not help but draw the conclusion that, having run two red lights, she might have stopped, and when Prunty warned her, and when Thompson warned her, it's kind of hard for me, and that was one of the things I was going to have trouble explaining to the Supreme Court, why she slipped out and did these things after being warned that this woman was under the jurisdiction of the Court.

Q Now, Mr. Mershon, after the Judge had found her in contempt of court for having Mrs. Dowling sign this petition to have this gentleman in Boston appointed conservator, did you later learn that Mr. Heller did the same thing, and took the petition up to Massachusetts and filed it?

A I heard that today. I didn't know it before.

Q Were there any contempt proceedings against Mr. Emory, as far as you know?

A Not so far as I know.

MR. JOHNSON: That's all we have.

#### REDIRECT EXAMINATION

BY MR. SUMMERS:

Q Mr. Mershon, just one or two questions.

Who did you hear from that Mr. Heller took the petition to Massachusetts? You heard it today. Who did you hear it from?

A I think Mr. Johnson probably mentioned it.

MR. JOHNSON: I merely asked you if you heard about it.

MR. SUMMERS: That's all.

#### RECROSS EXAMINATION

BY MR. JOHNSON:

Q Were you very surprised to learn that, Mr. Mershon?

A Well, I'm not surprised at anything.

MR. HUNT: Thank you.

SENATOR DAVIS: Mr. Chief Justice, point of order.

CHIEF JUSTICE TERRELL: The point of order is well taken.

Court is adjourned till 9:30 in the morning.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 6:25 o'clock P.M. until 9:30 o'clock A.M., Tuesday, August 6, 1957.